

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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WEDNESDAY, NOVEMBER 1, 1989



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UNLESS WRITTEN NOTIFICATION OF INTENT TO ATTEND
A PUBLIC HEARING IS RECEIVED BY THE PROMULGATING
AGENCY AT LEAST FIVE (5) DAYS BEFORE THE HEARING
DATE, THE HEARING MAY BE CANCELLED.

MEETING NOTICE: The next meeting of the Administrative Regulation
Review Subcommittee is tentatively scheduled on November 1 & 2, 1989.
See tentative agenda on pages 729-731 in this Administrative Register.

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KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

Title	Chapter	Regulation
806	KAR 50	: 155
Cabinet, Department, Board or Agency	Office, Division, or Major Function	Specific Regulation

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - November 1, 1989
(Rm. 107, Capitol Annex @ 1 p.m.)

DEPARTMENT OF PERSONNEL

Personnel Department; Classified

- 101 KAR 2:006. Repeal of previous regulations. (Repeals 101 KAR 2:010; 101 KAR 2:080;
- 101 KAR 2:110; 101 KAR 2:130)
- 101 KAR 2:020. Classification plan.
- 101 KAR 2:030. Compensation plan.
- 101 KAR 2:040. Applications and examinations.
- 101 KAR 2:050. Registers.
- 101 KAR 2:060. Certification and selection of eligibles.
- 101 KAR 2:070. Types of appointments and detail to special duty.
- 101 KAR 2:090. Service regulations.
- 101 KAR 2:100. Leave regulations.
- 101 KAR 2:150. State safety program.
- 101 KAR 2:160. Kentucky employee assistance program.

Personnel Department; Unclassified

- 101 KAR 3:006. Repeal of previous regulation. (Repeals 101 KAR 3:030)
- 101 KAR 3:040. Unclassified service; classification and compensation plans.
- 101 KAR 3:050. Unclassified service; promotion, transfer and disciplinary actions.

REVENUE CABINET

Department of Administrative Services

Selective Excise Tax; Motor Fuels

- 103 KAR 43:310. Subjobber issuance of refund invoices.

GENERAL GOVERNMENT CABINET

Board of Pharmacy

- 201 KAR 2:121. Repeal of regulations. (Repeals 201 KAR 2:120; 201 KAR 2:125; 201 KAR 2:135;
- 201 KAR 2:140; 201 KAR 2:145; 201 KAR 2:150; 201 KAR 2:155)

Board of Registration for Professional Engineer and Land Surveyors

- 201 KAR 18:150. Standards of practice.

TOURISM CABINET

Department of Fish and Wildlife Resources

Game

- 301 KAR 2:044 & E. Taking of migratory wildlife.
- 301 KAR 2:140. Seasons for wild turkey.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division of Water

Water Quality

- 401 KAR 5:005. Permits to discharge sewage; industrial and other wastes; definitions.
- 401 KAR 5:010. Certification of wastewater system operators
- 401 KAR 5:085. KPDES discharge permit and variance fees.

Sanitary Engineering

- 401 KAR 6:300. Water well drillers certification; examination; fees.

Division of Waste Management

Identification and Listing of Hazardous Waste

- 401 KAR 31:010. General provisions for hazardous wastes. (Not Amended After Hearing)
- 401 KAR 31:040. Lists of hazardous wastes. (Amended After Hearing)
- 401 KAR 31:160. Appendix on basis for listing hazardous waste. (Not Amended After Hearing)
- 401 KAR 31:170. Appendix on hazardous constituents. (Not Amended After Hearing)

Standards for Owners and Operators of Hazardous Waste Storage, Treatment and Disposal Facilities

- 401 KAR 34:350. Treatment, storage and disposal of nerve agents. (Amended After Hearing)

Hazardous Waste Permitting Process

- 401 KAR 38:190. Specific Part B requirements for incinerators. (Amended After Hearing)

Hazardous Waste Fees

- 401 KAR 39:010. Generator registration fees.
- 401 KAR 39:020. Delisting and exemption fees.
- 401 KAR 39:030. Part B treatment, storage, or disposal facility fees.
- 401 KAR 39:060. Short-term fees.
- 401 KAR 39:070. Modification fees.
- 401 KAR 39:080. Recycling fees.
- 401 KAR 39:090. Postclosure fees.
- 401 KAR 39:110. Marketer and burner registration fees.
- 401 KAR 39:120. Part A application fee.

Division for Air Quality

General Administrative Procedures

- 401 KAR 50:036. Permit and exemption fees.

Department for Surface Mining Reclamation and Enforcement

Permits

405 KAR 8:010 & E. General provisions for permits. (Amended After Hearing)

Bond and Insurance Requirements

405 KAR 10:200 & E. Kentucky bond pool.

CORRECTIONS CABINET

Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:040. Kentucky State Penitentiary.

501 KAR 6:060. Northpoint Training Center.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

TENTATIVE AGENDA

November 2, 1989

(Rm. 107, Capitol Annex @ 10 a.m.)

TRANSPORTATION CABINET

Department of Vehicle Regulation

Division of Motor Carriers

601 KAR 1:025. Transporting hazardous materials; permit.

EDUCATION AND HUMANITIES CABINET

State Board for Elementary and Secondary Education

Department of Education

Office of Superintendent

701 KAR 5:060. Code of ethics for state testing program.

Office of School Administration and Finance

Buildings and Grounds

702 KAR 4:050. Building sites; inspection, approval.

School Terms, Attendance and Operation

702 KAR 7:030. Census.

Office of Instruction

Student Services

704 KAR 7:090. Homeless children education program.

Teacher Certification

704 KAR 20:005. Kentucky standards for preparation-certification of professional school personnel program approval.

704 KAR 20:100. Administrators and supervisors.

704 KAR 20:130. Guidance counselors.

704 KAR 20:530. Guidance counselor, provisional and standard certificates.

704 KAR 20:540. Professional certificate for administrator of pupil personnel services.

704 KAR 20:560. Master of arts in teaching.

LABOR CABINET

Department of Workplace Standards

Occupational Safety and Health

THE AGENCY HAS REQUESTED THAT THE 803 REGULATIONS BE DEFERRED UNTIL THE DECEMBER MEETING

803 KAR 2:300. Adoption of 29 CFR Part 1910. (Repeals 803 KAR 2:020) (Agency Requests Deferral)

803 KAR 2:301. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:302. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:303. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:304. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:305. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:306. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:307. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:308. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:309. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:310. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:311. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:313. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:314. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:315. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:316. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:317. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:318. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:319. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:320. Adoption of 29 CFR Part 1910. (Agency Requests Deferral)

803 KAR 2:400. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)

803 KAR 2:403. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)

803 KAR 2:404. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)

803 KAR 2:405. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)

803 KAR 2:406. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)

Occupational Safety and Health (cont'd)

- 803 KAR 2:409. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)
 803 KAR 2:410. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)
 803 KAR 2:411. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)
 803 KAR 2:413. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)
 803 KAR 2:414. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)
 803 KAR 2:416. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)
 803 KAR 2:418. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)
 803 KAR 2:420. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)
 803 KAR 2:421. Adoption of 29 CFR Part 1926. (Agency Requests Deferral)
 803 KAR 2:500. Adoption of 29 CFR Parts 1915, 1917, 1918 and 1919, maritime employment. (Agency Requests Deferral)
 803 KAR 2:600. Adoption of 29 CFR Part 1928. (Agency Requests Deferral)

PUBLIC PROTECTION AND REGULATION CABINET
 Department of Financial Institutions
 Division of Securities

Securities

- 808 KAR 10:040. Dishonest or unethical conduct defined.

CABINET FOR HUMAN RESOURCES
 Department for Health Services

Communicable Diseases

- 902 KAR 2:011. Repeal of 902 KAR 2:010.
 902 KAR 2:020. Reportable Diseases.
 902 KAR 2:040. Surveillance and screening of carriers and selected groups.
 902 KAR 2:060. Immunization schedules.
 902 KAR 2:080. Sexually transmitted diseases.
 902 KAR 2:090. Tuberculosis testing.

Maternal and Child Health

- 902 KAR 4:100. Maternal and child health services.

Department for Mental Health and Mental Retardation Services

Institutional Care

- 908 KAR 3:060. "Means Test" pursuant to the "Patient Liability Act of 1978."
 908 KAR 3:150. Policies and procedures of Western State Hospital VOLTA program.

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11. I certify that the statements made by me above are correct and complete Signature and Title of Editor, Publisher, Business Manager, or Owner <i>[Signature]</i> Assistant Director			

REGULATION REVIEW PROCEDURE

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, tiering statement, regulatory impact analysis, fiscal note, and the federal mandate comparison. Those regulations received by the deadline required in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing

The administrative body shall schedule a public hearing on proposed administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

No transcript of the hearing need be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and following publication shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

EMERGENCY REGULATIONS NOW IN EFFECT

(NOTE: Emergency regulations expire 90 days from publication or upon replacement or repeal.)

STATEMENT OF EMERGENCY
405 KAR 10:200E

This emergency regulation allows the Bond Pool Commission to defer action on an application for membership until violations and penalty assessments which would affect an applicant's eligibility or rating have been resolved. It requires members to notify the commission in writing upon submission of a preliminary permit application to the cabinet. It deletes from the definition of "member" the requirement that only permits held by members can be covered by the pool, for consistency with KRS 350.720(14) which allows pool coverage for nonmember permittees under the abandoned mine land enhancement program. Most importantly, and the reason for the urgency of this regulation, it relaxes the criteria which determine if the applicant has an "acceptable" or "excellent" reclamation compliance record, and allows the commission greater flexibility to consider the seriousness of the applicant's past violations when applying these criteria to determine the applicant's eligibility for the bond pool. This emergency regulation thus allows more Kentucky coal companies to be immediately eligible for membership in the Kentucky Bond Pool.

Bonding has become critical to Kentucky's coal industry. A recent study by the United States General Accounting Office found that the number

of surety companies writing reclamation bonds in Kentucky decreased by approximately 43% from 1982 to 1986. Coal operators have encountered great difficulties in finding replacement bonding institutions. Those surety companies still writing bonds are reluctant to accept new clients and most have raised their premium rates and up-front collateral requirements. Many coal operators have turned to letters of credit but have found that most banks will approve only a limited credit line which may not sustain their mining operations.

In addition to being a much-needed alternative source of bonding, the bond pool offers substantial savings to its members. Reclamation bonds in Kentucky average approximately \$3,000 per acre and must be maintained for at least five years after the mining has been completed. Pool members themselves supply only \$500 to \$2,000 per acre, depending on the member's assigned rating, and the pool supplies the remainder. Also, the member's portion is completely released after Phase I reclamation, allowing that money to be used as bond on additional permits. Access to the bond pool may make the difference in some companies being able to stay in business. At least four of seven pending membership applications could be approved under this emergency regulation. In addition, several companies have shown serious interest in the program and are expected to

submit applications when the emergency regulation is in place.

This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 15, 1989.

WALLACE G. WILKINSON, Governor
CARL H. BRADLEY, Secretary

**NATURAL RESOURCES & ENVIRONMENTAL
PROTECTION CABINET
Department for Surface Mining Reclamation
and Enforcement**

405 KAR 10:200E. Kentucky bond pool.

RELATES TO: KRS Chapter 304, 350.020, 350.028, 350.060, 350.062, 350.064, 350.068, 350.085, 350.093, 350.095, 350.100, 350.110, 350.113, 350.130, 350.135, 350.151, 350.260, 350.465, 350.700, 350.705, 350.710, 350.715, 350.720, 350.725, 350.730, 350.735, 350.740, 350.745, 350.750, 350.755, 350.990

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.062, 350.064, 350.093, 350.130, 350.151, 350.465, 350.710, 350.715, 350.720, 350.725, 350.730, 350.735, 350.740, 350.750

EFFECTIVE: September 27, 1989

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to regulate surface coal mining and reclamation operations, including requiring bond sufficient to insure satisfactory reclamation. KRS Chapter 350 further authorizes the cabinet to establish alternative methods of meeting bonding requirements. This regulation implements an alternative bonding program known as a bond pool. This regulation establishes requirements for applications for membership in the bond pool; procedures for submittal of, review of, and decisions on [such] applications, including determinations of financial standing and reclamation compliance records of applicants; procedures for acceptance of specific permit areas into coverage by the bond pool; and procedures for keeping of production records, reporting of production, and payment of fees based on coal production.

[Section 1. Applicability. This regulation applies only to the voluntary alternative bonding program known as the Kentucky Bond Pool, as established in Senate Bill No. 130, 1986 Acts Chapter 137, codified at KRS 350.700 through .755; and to permanent program permits, or parts of such permits, covered under that pool.]

Section 1. [2.] Definitions. (1) "Administrator" or "bond pool administrator" means the cabinet employee named by the secretary to assist the commission and to perform certain administrative functions in connection with the bond pool, as required by KRS 350.715.

(2) "Applicant," for purposes of this regulation, means a person or entity which has submitted an application form to the commission seeking membership in the bond pool.

(3) "Bond pool" or "Kentucky Bond Pool" means the voluntary alternative bonding program as established at KRS 350.700 through .755.

(4) "Commission" or "bond pool commission"

means the seven (7) member body established at KRS 350.705.

(5) "Member" means a person or entity which the bond pool commission has determined meets the minimum requirements of KRS 350.720 and this regulation for inclusion in the bond pool and upon whom the commission has formally conferred membership. [Permanent program permits, or portions thereof, may be covered by the bond pool only if the permittee is a member of the bond pool.]

(6) "Month of operation," for the purposes of Section 7 of this regulation, means a calendar month in which a duty exists to reclaim a disturbed area for which a permit was issued under KRS Chapter 350. It is not necessary that coal extraction occur during the month.

Section 2. Applicability. This regulation applies only to the voluntary alternative bonding program known as the Kentucky Bond Pool, as established at KRS 350.700 through 350.755, and to permanent program permits or increments covered under that pool.

Section 3. Review of Decisions. There shall be no administrative appeal under 405 KAR 7:090 from a decision of the commission. However, the applicant or member may within sixty (60) days after notice of the decision, request the commission to reconsider its decision. The commission may, at its discretion, grant or deny the request for reconsideration.

Section 4. Applications for Membership. (1) Any person desiring membership in the bond pool shall submit an application for membership to the commission at the address established by the administrator.

(2) The application shall be submitted on forms provided by the commission and shall be of the [such] form, content, and number of originals and copies as the commission may require. The application shall be typed or printed, and shall be legible throughout.

(3) Financial statements required with the application shall be prepared by a certified public accountant. Financial statements shall be kept confidential to the commission, the administrator, and cabinet personnel authorized by the administrator.

(4) The application shall include an application fee of \$100, by certified check, cashier's check, or money order made payable to "Kentucky State Treasurer." The fee shall not be refunded in any circumstances, but shall be applied toward the membership fee if the applicant is accepted for membership.

(5) The application shall be complete in all respects.

Section 5. Review of Applications. (1) As soon as practicable after the administrator receives the application, he shall determine whether the application is complete or incomplete.

(a) If the application is incomplete, the administrator shall so notify the applicant and shall identify the additional information which is needed to make the application complete. The applicant may submit the corrected application, in whole or in part, and no additional application fee shall be required.

(b) If the application is complete, the administrator shall so notify the applicant in writing. The administrator shall evaluate the

complete application and any other relevant information available to the administrator, and shall submit the evaluation to the commission. The application, the administrator's evaluation, and any other relevant information available to the commission, shall form the factual basis for the commission's decision on the application.

(2) The commission shall act upon the application as soon as practicable.

(a) If the commission approves the application, the administrator shall provide written notice to the applicant. The notice shall specify the rating which the applicant will receive upon membership, and shall state the membership fee required. The applicant shall submit the required membership fee. As soon as practicable after receipt of the membership fee, the administrator shall provide the applicant with an official certificate of membership which shall confer actual membership as of the date of the certificate. The certificate shall state the rating assigned to the member and also shall assign the member a unique membership number. The certificate shall be signed by the chairman of the commission and by the administrator.

(b) If the commission denies the application, the administrator shall provide written notice to the applicant, setting forth the reasons for denial. The notice of denial shall be signed by the chairman of the commission.

(3) The commission may defer its decision on an application if the applicant, any person who owns or controls the applicant, any person who is owned or controlled by the applicant, or any person who is under common ownership or control with the applicant has appealed a violation or cessation order or has a violation pending a penalty assessment and the violation or cessation order pending an appeal or penalty assessment would affect the applicant's eligibility or rating.

Section 6. Determination of Financial Standing. (1) If the commission or administrator prepares summaries or analyses of information contained in the applicant's financial statements, they [such documents] shall be kept confidential where necessary to insure the confidentiality of information contained in the financial statements.

(2) The financial standing of the applicant shall be determined based upon the financial information required in the application and other information available to the commission and cabinet. The commission may consider, but shall not be limited to, the following financial ratios and related financial information:

- (a) The ratio of current assets to current liabilities;
- (b) The ratio of net income to net sales;
- (c) The ratio of total liabilities to stockholders' equity;
- (d) The ratio of net income to owners' equity;
- (e) The ratio of owners' equity to total assets; and
- (f) The ratio of the sum of cash, marketable securities, and net receivables, to current liabilities.

Section 7. Determination of Reclamation Compliance Record. (1) Excellent compliance record. The applicant shall be deemed to have an excellent compliance record if the applicant, each person who owns or controls the applicant, each person who is owned or controlled by the

applicant, and each person who is under common ownership or control with the applicant, meet all the criteria in this subsection.

(a) Has never committed a violation for mining without a permit under KRS Chapter 350;

(b) [(a)] Has never forfeited a bond or had a permit revoked under KRS Chapter 350;

(c) [(b)] Has never avoided forfeiture of a bond under KRS Chapter 350 because a surety performed reclamation work in order to avoid forfeiture;

(d) [(c)] Has never been determined to have demonstrated a pattern of willful violations pursuant to KRS 350.028(4), 350.130(3), or 350.465(3)(f);

(e) [(d)] Has not been issued more than one (1) [a] failure-to-abate cessation order pursuant to 405 KAR 12:020, Section 3(1)(a) in the most recent thirty-six (36) months of operation and the cessation order was abated as ordered by the cabinet in a timely manner and was not for a violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020;

(f) [(e)] Has not been issued more than one (1) cessation order under 405 KAR 12:020, Section 3(1)(b) in the most recent thirty-six (36) months of operation and the cessation order was abated as ordered by the cabinet in a timely manner;

(g) [(f)] Has not committed more than one (1) [a] violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020 in the most recent thirty-six (36) months of operation and the violation was abated as ordered by the cabinet in a timely manner, except the commission may for good cause and by unanimous vote exclude violations that have been terminated by the cabinet with no civil penalty;

(h) [(g)] Has not committed more than three (3) violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except [that] the commission may for good cause and by unanimous vote exclude the twelve (12) month period on one (1) permit during which the largest number of [such] violations occurred and may for good cause and by unanimous vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty; or

(i) [(h)] Has not had civil penalties under KRS 350.990, 405 KAR 7:090 or 405 KAR 7:095 remaining unpaid more than thirty (30) days after they were due and payable, within the most recent thirty-six (36) months of operation.

(j) [(i)] To the extent [such] information is available, the commission may take into account the applicant's performance in other states and on federal lands and Indian lands under criteria similar or equivalent to those in [paragraphs (a) through (h) of] this subsection.

(2) Acceptable compliance record. The applicant shall be deemed to have an acceptable compliance record if the applicant, each person who owns or controls the applicant, each person who is owned or controlled by the applicant, and each person who is under common ownership or control with the applicant, meet all the criteria in this subsection:

(a) Has never committed a violation for mining without a permit under KRS Chapter 350;

(b) [(a)] Has never forfeited a bond or had a permit revoked under KRS Chapter 350;

(c) [(b)] Has never avoided forfeiture of a bond under KRS Chapter 350 because a surety performed reclamation work to avoid forfeiture;

(d) [(c)] Has never been determined to have demonstrated a pattern of willful violations pursuant to KRS 350.028(4), 350.130(3), or 350.465(3)(f);

(e) Has not been issued more than four (4) cessation orders under 405 KAR 12:020, Section 3, in the most recent thirty-six (36) months of operation and each cessation order was abated as ordered by the cabinet in a timely manner and not more than one (1) was for a violation of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020;

[(d) Has not been issued a failure-to-abate cessation order pursuant to 405 KAR 12:020, Section 3(1)(a) in the most recent thirty-six (36) months of operation;]

[(e) Has not been issued a cessation order under 405 KAR 12:020, Section 3(1)(b) in the most recent thirty-six (36) months of operation;]

(f) Has not committed more than three (3) violations [one (1) violation] of contemporaneous reclamation requirements under 405 KAR 16:020 or 405 KAR 18:020 in the most recent thirty-six (36) months of operation, except the commission may for good cause and by unanimous vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty;

(g) Has not committed more than eight (8) violations of KRS Chapter 350 or 405 KAR Chapters 7 through 24 on any one (1) permit in any twelve (12) month period of the most recent thirty-six (36) months of operation, except [that] the commission may for good cause and by unanimous vote exclude the twelve (12) month period on one (1) permit during which the largest number of [such] violations occurred and may for good cause and by unanimous vote exclude violations that were timely abated and terminated by the cabinet with no civil penalty; or

(h) Has not had civil penalties under KRS 350.990, 405 KAR 7:090 or 405 KAR 7:095 remaining unpaid more than ninety (90) days after they were due and payable, within the most recent thirty-six (36) months of operation.

(i) To the extent [such] information is available, the commission may take into account the applicant's performance in other states and on federal lands and Indian lands under criteria similar or equivalent to those in [paragraphs (a) - (h) of] this subsection.

Section 8. Acceptance of Permit Areas Into Bond Pool. (1) The commission shall specifically set forth those permits, increments, or portions thereof, which have been accepted for coverage under the bond pool. Coverage shall not be effective unless so identified by the commission.

(2) Eligible portions of all permits issued to the member after the date of membership shall be covered by the bond pool.

(3) If a permit was issued to the member prior to the date of membership but has not been disturbed as of the date of membership, eligible portions of the permit shall be covered by the bond pool. The member shall substitute the appropriate rating based bond under KRS 350.735 for the bond originally posted for the permit area or increment.

(4) For existing permits or increments which have been disturbed as of the date of

membership, the bond pool shall cover all eligible undisturbed portions of the [such] permits or increments in accordance with this subsection.

(a) A permit area or increment shall not be accepted for coverage if coal removal has been completed or substantially completed on the permit area or increment. In determining whether coal removal has been substantially completed, the commission shall consider [such] factors such as the amount or percentage of coal yet to be extracted from the permit area or increment, the acreage or percentage of the permit area or increment yet to be disturbed, and the amount of time which likely would be required to complete coal extraction from the permit area or increment.

(b) Within thirty (30) days after the date of membership the member shall, for each existing permit, designate to the cabinet in writing a date, which shall be not later than ninety (90) days after the date of membership, on which eligible portions of the permit shall be covered by the bond pool. With the designation, the member shall also submit maps as required by the cabinet which clearly identify those portions of the permit area which the member expects to have disturbed as of the designated date and those portions which are expected to remain undisturbed as of that date. The cabinet may, on a case-by-case basis and for good cause, grant extensions to the thirty (30) and ninety (90) day periods in this paragraph.

(c) The cabinet shall recalculate the bond amount for the permit area or increment as two (2) bond amounts for two (2) new increments. One (1) new increment shall include the portion expected to be disturbed as of the designated date, and one (1) shall include the portion expected to remain undisturbed as of the designated date.

(d) The member shall, on or before the designated date, post a new bond in the amount determined by the cabinet for the increment containing the areas expected to be disturbed as of the designated date. This increment shall not be covered by the bond pool.

(e) The member shall, on or before the designated date, post a new rating based bond in the amount determined by the cabinet pursuant to KRS 350.735 for the increment containing the areas expected to remain undisturbed as of the designated date. This increment shall be covered by the bond pool. This increment shall not be disturbed until the bond required under this paragraph has been posted.

(f) Upon receipt and approval of acceptable bonds as required by paragraphs (d) and (e) of this subsection, and upon verification by the cabinet that the increment to be covered by the bond pool has not been disturbed, the cabinet shall release the bond originally posted for the permit area or increment.

(5) Any member that submits a preliminary permit application to the cabinet shall notify the bond pool administrator in writing within fourteen (14) calendar days of the submittal date.

Section 9. Production Records, Reporting, and Payment of Fees. (1)(a) Authorized representatives of the commission and administrator shall have access to all permit areas of the member for purposes of determining compliance with the requirements of this section.

(b) Each member shall make any book or record necessary to substantiate the accuracy of reports and payments available at reasonable times for inspection and copying by authorized representatives of the commission and administrator. The [Such] books and records shall include, but not be limited to, those required under subsection (2) of this section, books and records related to federal reclamation fees as required under 30 CFR Part 870, and books and records related to Kentucky coal severance tax as required under KRS Chapter 143. All information copied shall be kept confidential to the administrator and commission and their authorized representatives.

(c) Each member shall retain books and records for a period of six (6) years from the end of the calendar month in which a report was due.

(d) Authorized representatives of the administrator and commission shall have authority to examine records of second parties involved in the sale or transfer of the ownership of coal by the member, and shall have authority to examine the records of any party selling or transferring coal to the member.

(2) Each member shall maintain current books and records that separately contain the tons of coal extracted for each permit covered by the bond pool.

(3) Determination of fees. Fees shall be determined by the weight of the coal the first time the coal is weighed.

(a) The weight of the coal shall be the actual gross weight of the coal. Impurities, including water, that have not been removed prior to the first time the coal is weighed shall not be deducted from the gross weight.

(b) If the member combines surface mined coal and underground mined coal before the coal is weighed, the rate for surface mined coal shall apply unless the member can substantiate the tonnage produced by surface and underground mining by acceptable engineering calculations or other procedures which the cabinet may require.

(4) Reporting of tonnage and payment of fees.

(a) On forms provided by the cabinet each member shall report, for each permit covered by the bond pool, all coal tonnage extracted during the reporting period. Payment of fees shall accompany the report.

(b) The reporting and payment period shall be monthly. The report shall be submitted, and fees shall be paid, not later than the 20th day of the month which follows the reporting period. The report shall be submitted even if the member has zero production during the reporting period.

(c) Late report or payment. If a member fails to submit a report or payment on or before the due date, five (5) percent of the original fee due shall be added to the fee for each month or fraction thereof elapsing between the due date and the date on which the report or payment is submitted. In no case shall the penalty be less than ten (10) dollars.

(5) As soon as practicable after each report is received, the administrator shall examine it and shall notify the member of any underpayment or overpayment.

(a) If the amount of required fee as computed by the administrator is greater than the amount submitted by the member, the administrator shall notify the member, within thirty (30) days from the date the payment was received, of the additional amount to be paid; except that in the case of a failure to submit a report or of a

fraudulent report, the examination and notification may occur at any time. Additional fee payments under this paragraph shall include a penalty of five (5) percent of the amount of the deficiency for each month or fraction thereof elapsing between the original due date and the date on which the payment is submitted.

(b) If the amount of required fee as computed by the administrator is less than the amount submitted by the member, the administrator shall notify the member, within thirty (30) days from the date the payment was received, of the amount of the overpayment. The member may receive credit for the overpayment against the next monthly payment or any subsequent payment.

FRANK DICKERSON, Commissioner

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: September 14, 1989

FILED WITH LRC: September 27, 1989 at 9 a.m.

STATEMENT OF EMERGENCY 904 KAR 2:016E

This emergency administrative regulation implements changes mandated by the Family Support Act of 1988 to be effective October 1, 1989. This emergency regulation is revised to increase the child care disregard from \$160 to \$175 per dependent child per month for full-time employment and from \$110 to \$150 per dependent child per month for part-time employment. For children under the age of two (2), it will increase to \$200. The child care disregard will be applied as the last deduction. The work expense standard deduction will increase from \$75 to \$90 per month. The advance payment or refund of the earned income tax credit shall be disregarded. The SREA payments are expanded to include "combination programs". Also, the part-time SREA payment for college/university has been increased to correspond with part-time payments for combination programs. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler for the October, 1989 filing.

WALLACE G. WILKINSON, Governor

HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management and Development

904 KAR 2:016E. Standards for need and amount; AFDC.

RELATES TO: KRS 205.200(2), 205.210(1), 42 CFR 435.831, 45 CFR 233

STATUTORY AUTHORITY: KRS 205.200(2)

EFFECTIVE: October 6, 1989

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Assistance group" is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent(s), and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his eligible parent(s), the minor's parent(s) shall also be included in the assistance group if the minor's parent applied for assistance. The incapacitated natural or adoptive parent of the child(ren) who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent/legal guardian is considered any person under the age of eighteen (18).

(3) "Sanctioned individual" means any person who is required to be included in the assistance group but who is excluded from the assistance group due to failure to fulfill an eligibility requirement.

(4) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(5) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(6) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in a General Educational Development (GED) program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time; or

(d) Eight (8) clock hours per month in a literacy program.

(e) Twenty-five (25) clock hours per week in combination programs.

(7) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(8) "Combination programs" means any educational program which includes as its basis literacy or GED. This program must also include life skills, skills training or job readiness training.

(9) [(8)] "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 7 [(8)] of this regulation, and any educational allowance as set forth in Section 8 [(9)] of this regulation.

(10) [(9)] "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(11) [(10)] "Recoupment" means recovery of overpayments of assistance payments.

(12) [(11)] "Retrospective budgeting" means computing amount of assistance based on actual income and circumstances which existed in the second month prior to the payment month.

[(13)] [(12)] "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

Section 2. Resource Limitations. Real and personal property owned in whole or in part by an applicant or recipient including sanctioned individual(s) and his parent(s), even if the parent(s) is not an applicant or recipient, if the applicant/recipient is a dependent child living in the home of said parent, shall be considered. The amount that can be reserved by each assistance group shall not be in excess of \$1,000 equity value excluding those items specifically listed in subsection (1) of this section as follows:

(1) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Home furnishings, including all appliances;

(c) Clothing;

(d) One (1) motor vehicle, not to exceed \$1,500 equity value;

(e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise;

(f) Items valued at less than fifty (50) dollars each;

(g) One (1) burial plot/space per family member;

(h) Funeral agreements not to exceed maximum equity of \$1,500 per family member;

(i) Real property which the assistance group is making a good faith effort to sell. This exemption shall not exceed a period of nine (9) months and is contingent upon the assistance group agreeing to repay AFDC benefits received beginning with the first month of the exemption. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment. The amount of the repayment shall not exceed the net proceeds of the sale. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Other items/benefits mandated by federal regulations.

(2) Disposition of resources. An applicant/recipient shall not have transferred or otherwise divested himself/herself of property without fair compensation in order to qualify for assistance. If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the household's application shall be denied, or assistance discontinued. The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer. If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

Section 3. Income Limitations. In determining eligibility for AFDC the following will apply:

(1) Gross income test. The total gross

non-AFDC income of the assistance group, as well as income of parent(s), sanctioned individuals and amount deemed available from the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group, and amount deemed available from a stepparent(s) living in the home, and amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard. Disregards specified in Section 4(1) of this regulation shall apply. If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.

(2) Applicant eligibility test. If the gross income is below the gross income limitation standard and the assistance group has not received assistance during the four (4) months prior to the month of application, the applicant eligibility test shall be applied. The total gross income after application of exclusions/disregards set forth in Section 4(1) and (2) of this regulation shall be compared to the assistance standard set forth in Section 2 [8] of this regulation. If income exceeds this standard, the assistance group is ineligible. For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation. If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4(1), (2), and (3) of this regulation. If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible. Amount of assistance for the initial two (2) months of eligibility shall be determined prospectively in accordance with 45 CFR 233.34, and for subsequent months retrospectively, in accordance with 45 CFR 233.35.

(4) A period of ineligibility shall be established in accordance with 45 CFR 233.20(a)(3)(ii)(F), for applicants/recipients whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income. The ineligibility period shall be recalculated if any of the following circumstances occur:

(a) The standard of need increases and the amount of grant the assistance group would have received also changes.

(b) The income received has become unavailable to the assistance group for reasons beyond their control.

(c) The assistance group incurs and pays medical expenses in accordance with 42 CFR 435.831(C).

Section 4. Excluded/Disregarded Income. All gross non-AFDC income received or anticipated to be received by the assistance group, natural parent(s) and parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group and stepparent(s) living in the home, shall be considered with the applicable exclusions/disregards as set forth below:

(1) Gross income test. All incomes listed below shall be excluded/disregarded:

(a) Disregards applicable to stepparent income and/or income of the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with the assistance unit, as set forth in Section 5 of this regulation;

(b) Disregards applicable to alien sponsor's income, as set forth in Section 6 of this regulation;

(c) Disregards applicable to self-employment income, as set forth in 45 CFR 233.20(a)(6)(v)(B);

(d) Work Incentive Program (WIN) incentive payments;

(e) Earnings received by a dependent child from participation in the Summer Youth Program, Work Experience Program, Limited Work Experience Program, and Tryout Employment Program under the Job Training Partnership Act (JTPA) for a period not to exceed six (6) months within a given calendar year, effective March 1, 1988;

(f) Unearned income received by a dependent child from participation in a JTPA program;

(g) Reimbursement for training-related expenses made by a manpower agency to applicants or recipients in institutional and work experience training programs under the WIN program;

(h) Value of the monthly allotment of food stamp coupons or value of United States Department of Agriculture (USDA) donated foods;

(i) Nonemergency medical transportation payments;

(j) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program;

(k) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans to any undergraduate made or insured under any program administered by the United States Commissioner of Education;

(l) Highway relocation assistance;

(m) Urban renewal assistance;

(n) Federal disaster assistance and state disaster grants;

(o) Home produce utilized for household consumption;

(p) Housing subsidies received from federal, state or local governments;

(q) Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of Public Law 94-114 that became effective October 17, 1975;

(r) Funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, Public Law 93-134 or Public Law 94-540;

(s) Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(t) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under Titles II and III, pursuant to Section 418 of Public Law 93-113;

(u) Payments to volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of

Public Law 93-113 except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

(v) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;

(w) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, adult foster care, or subsidized adoption;

(x) Payments made under the Low Income Home Energy Assistance Act (LIHEAP) and other energy assistance payments which are permitted to be excluded pursuant to 45 CFR 233.53 (c)(5)(i);

(y) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(z) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance;

(aa) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group; and

(bb) Effective January 3, 1989, loans.

(cc) Effective June 1, 1989, up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II.

(dd) Effective June 1, 1989, the essential person's portion of the SSI check.

(ee) The advance payment or refund of earned income tax credit (EITC).

(2) Applicant eligibility test. The exclusions/disregards set forth in subsection (1) of this section and those listed below shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of ninety (90) [seventy-five (75)] dollars for full-time and part-time employment; and

(d) Child care, for a child(ren) or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed \$175 [160] per month per individual for full-time employment or \$150 [110] per month per individual for part-time employment, or \$200 per month per individual for child under age two (2).

(3) Benefit calculation. After eligibility is established, exclude/disregard all incomes listed in subsections (1) and (2) of this section as well as:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. The one-third (1/3) portion of this disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income. The thirty (30) dollar portion of this disregard

shall be applied concurrently with the one-third (1/3) disregard, however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence. These disregards shall be applied in accordance with 45 CFR 233.20(a)(11)(i)(D) and 45 CFR 233.20(a)(11)(ii)(B) and shall not be available to the individual until he/she has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Disregards from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in such employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at such job or training would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for such work in the community was not made; or

5. Effective February 1, 1988, the child care arrangement is terminated through no fault of the client; or

6. Effective February 1, 1988, the available child care does not meet the needs of the child(ren), e.g., handicapped or retarded children.

(b) Fails to make a timely report of earnings unless good cause exists as follows:

1. The assistance group moved and reported the move timely, however, the move resulted in a delay in receiving or failure to receive the mandatory monthly report form; or

2. An immediate family member living in the home was institutionalized or died during the filing period; or

3. The specified relative was out of town during the entire filing period; or

4. The assistance group has been directly affected by a natural disaster (i.e., fire, flood, storm, earthquake).

(c) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section.

(5) Sanction exception. The earned income of sanctioned individuals shall be counted without providing the exclusion/disregards in either subsections (2) and (3) of this section.

Section 5. Income and Resources. Income and resources of a stepparent living in the home with a dependent child and parent(s)/legal guardian(s) living in the home with a minor parent/legal guardian but whose needs are not included in the grant are considered as follows:

(1) Income. The gross income is considered available to the assistance group, subject to the following exclusions/disregards:

(a) The first ninety (90) [seventy-five (75)] dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for the appropriate family size, for the support of the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian and any other individuals living in the home but whose needs are not taken into consideration in the AFDC eligibility determination and are or may be claimed by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian as dependents for purposes of determining his federal personal income tax liability;

(c) Any amount actually paid by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian to individuals not living in the home who are or may be claimed by him as dependents for purposes of determining his/her personal income tax liability;

(d) Payments by the stepparent and parent(s)/legal guardian(s) of a minor parent/legal guardian for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent and parent(s)/legal guardian(s) of a minor parent/legal guardian receiving Supplemental Security Income (SSI) under Title XVI.

(2) Sanction exception. The needs of any sanctioned individual are not eligible for the exclusion(s) listed in this section.

(3) Resources. Resources which belong solely to the stepparent and parent(s)/legal guardian(s) of a minor parent/legal guardian are not considered in determining eligibility of the parent or the assistance group.

Section 6. Alien Income and Resources. For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor. The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien(s), subject to disregards as set forth below, for a period of three (3) years following entry into the United States. If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens. A sponsored alien is ineligible for any month in which adequate information on the sponsor/sponsor's spouse is not provided. If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization is no longer in existence or does not have the financial ability to meet the alien's needs. The provisions of this section shall not apply to those aliens identified in 45 CFR 233.51(e).

(1) Income. The gross income of the sponsor is considered available to the assistance group subject to the following disregards:

(a) Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

(b) An amount equal to the AFDC assistance standard for the appropriate family size of the sponsor and other persons living in the household who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability, and whose needs are not considered in making a determination of eligibility for AFDC;

(c) Amounts paid by the sponsor to

nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

(d) Actual payments of alimony or child support paid to nonhousehold members; and

(e) Income of a sponsor receiving SSI or AFDC.

(2) Resources. Resources deemed available to the alien(s) shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were an AFDC applicant in this state, less \$1,500.

[Section 7. Earned Income Tax Credit (EITC). In the case of an applicant or recipient of AFDC, EITC payments shall be considered as earned income when received.]

Section 7. [8.] Payment Maximum. The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, is as follows:

Effective July 1, 1989		
Number of Eligible Persons	Payment Maximum	Standard of Need
1 child	\$162	\$394
2 persons	\$196	\$460
3 persons	\$228	\$526
4 persons	\$285	\$592
5 persons	\$333	\$658
6 persons	\$376	\$724
7 or more persons	\$419	\$790

Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size. The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 8. [9.] Special Requirement Educational Allowance (SREA). An educational allowance for child care shall be included in the assistance standard each month at the request of the caretaker relative, if the criteria in subsection (1) of this section are met and verified for those month(s) and funds are available. Households receiving the educational allowance shall be subject to time frames, procedures, and penalties established for households required to report monthly. In addition, effective August 1, 1988 a transportation allowance shall be included in the assistance standard if the criteria in subsection (1)(a) and (b) of this section are met. Effective May 1, 1989, SREA recipients may request that the SREA payment be issued directly to the child care provider of their choice unless the caretaker relative has more than one (1) provider in a given month.

(1) Technical requirements. The following requirements shall be met during any month for which an education allowance is paid.

(a) The caretaker relative shall be included in the assistance grant;

(b) The caretaker relative shall be enrolled full time, as defined in Section 1 of this regulation, in a literacy program, high school (including primary and secondary), vocational school, or a General Educational Development

(GED) program or combination program for which no wage or child care allowance is received. If attending college, the caretaker relative shall be enrolled either full or part-time, as defined in Section 1 of this regulation;

(c) A cost shall have been incurred for the care of a child(ren) who is/are under the age of thirteen (13) or a child(ren) who is/are under the age of eighteen (18), if a physician determines the child is unable to attend school due to a physical or mental disability, and is/are included in the assistance grant; and

(d) The payment for child care is made to a provider who is not a household member.

(2) Educational allowance payment standards. The amount of the monthly transportation allowance shall be twenty (20) dollars. The amount of monthly educational allowance payment shall be based on the number of eligible children for whom care is being provided and whether or not enrollment is full or part-time. Effective May 1, 1989 the payment standards are as follows:

	1 Child		2 or More Children	
	Full-Time	Part-Time	Full-Time	Part-Time
Literacy	\$ 20	-	\$ 36	-
GED	\$ 94	-	\$169	-
Elementary School/				
Junior High	\$174	-	\$313	-
High School	\$174	-	\$313	-
Vocational School	\$174	-	\$313	-
College/University	\$174	\$143	\$313	\$257
		[103]		[185]
Combination Programs	\$174	\$143	\$313	\$257
[Kenan/PACE	\$143	-	\$257	-]

The only combination programs recognized in operating JET counties are those authorized by the department.

(3) Limitations. The number of months a child care educational allowance payment or a transportation educational allowance payment is made shall be limited according to the type of program in which the student enrolls and shall not be provided beyond completion of one (1) program at each level.

(a) Literacy: Type of Program Maximum
 Literacy 24 months

(b) High school level.

1. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
General Educational Development (GED)	16 months
High School (includes primary and secondary)	27 months

2. A student wishing to continue his education past the high school level may be eligible for additional payments not to exceed the maximums for the posthigh school level.

(c) Posthigh school level. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
Vocational School	24 months
College/University	50 months

Effective May 1, 1989, if a student changes enrollment from full time to part time or from part time to full time during the month, payment shall be authorized for the type of enrollment in which the student participated for the majority of the month.

Section 9. [10.] Recoupment. The following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The overpaid assistance unit;

(b) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(c) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 7 [8] of this regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) Overpayments may be waived for inactive nonfraud cases involving less than thirty-five (35) dollars in overpayment.

(5) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(6) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing is given and the administrative and judicial remedies have been exhausted or abandoned in accordance with Title 904, Chapter 2.

Section 10. [11.] Provisions contained in this regulation shall become effective October 1, 1989 [as specified within the regulation].

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: September 25, 1989

FILED WITH LRC: October 6, 1989 at 4 p.m.

STATEMENT OF EMERGENCY 904 KAR 2:025E

This emergency administrative regulation establishes the Kentucky Child Support Guidelines. Public Law 100-485, the Family Support Act of 1988 mandates the implementation of guidelines to be effective October 13, 1989. These guidelines must be used by all agencies involved in the establishment of child support obligation amounts, both judicial and administrative. If Kentucky is found to be not

in compliance with the federal law the state can potentially lose \$12 to \$13 million in federal funds annually. Legislation containing these guidelines will be introduced in the 1990 General Assembly. However, since this cannot be done to allow timely implementation, this emergency regulation is being requested as an interim measure. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler for the October 1989 filing.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:025E. Kentucky child support guidelines.

RELATES TO: KRS 205.715-205.800, 403.210, 403.215, 405.405-405.530, 530.050

STATUTORY AUTHORITY: 194.050, 405.520

EFFECTIVE: October 9, 1989

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility for administering the child support program in accordance with Title IV-D of the Social Security Act, Title 45 CFR Sections 301, 302, 303, 304, 305, 306, and 307. In addition, KRS 405.520 authorizes the cabinet to adopt regulations necessary to prevent conflict with federal laws and regulations or the loss of federal funds. The Family Support Act, 42 U.S.C. §667, requires states to establish guidelines for child support award amounts within the state effective October 13, 1989 as a condition for having its state plan approved. This regulation establishes the Kentucky Child Support Guidelines including instructions, worksheet, and scales for the determination of a parent's monthly child support obligation.

Section 1. Instructions for Use. The worksheet allows the determination of the basic monthly child support payment. This process is based on the concept that both parents are responsible for the financial support of their children. It uses a percentage allocation of both parent's income to determine the basic monthly amount of child support, and divides responsibility for each parent's share. This method assumes that the custodial parent's share is spent directly on the child, and fixes the amount of cash contribution from the noncustodial parent.

(1) **Monthly gross income.** The total gross monthly income of each parent shall be entered on Line 1(1) of the worksheet. In the first column, enter the income of the custodial parent. The noncustodial parent's income shall be written in the second column.

(a) **Definition.** For purposes of this guideline, "income" is defined as actual gross income of the parent, if employed to full capacity, or potential income if unemployed or underemployed. Gross income of each parent shall be determined as specific below and entered on Line 1(1).

(b) **Gross income.** Gross income includes income from any source, except as excluded below, and includes but is not limited to income from salaries, wages, commissions, bonuses,

dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and alimony or maintenance received. Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI) and food stamps.

(c) **Income from self-employment or operation of a business.** For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Straight line depreciation, using IRS guidelines, is the only allowable method of calculating depreciation expense in determining gross income. Specifically excluded from ordinary and necessary expenses for purposes of this guideline are investment tax credits or any other business expenses determined to be inappropriate for determining gross income for purposes of calculating child support. In general, income and expenses from self-employment or operation of a business shall be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursement or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Such payments might include a company car, free housing, or reimbursed meals.

(d) **Potential income.** If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a determination of potential income shall not be made for a parent that is physically or mentally incapacitated or is caring for a very young child (age three (3) or younger) for whom the parents owe a joint legal responsibility. Determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community.

(e) **Income verification.** Income statements of the parents shall be verified with documentation of both current and past income. Suitable documentation of current earnings (at least one (1) full month) includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current income must be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period.

(2) **Health insurance.** For each child support order, consideration shall be given to provision of adequate health insurance coverage for the child. Such health insurance shall normally be provided by the parent that can obtain the most comprehensive coverage through an employer at least cost. If either parent does carry health insurance for the child(ren) due support, the

cost of that coverage shall be deducted from gross income on Line 2 of the worksheet. If coverage is provided through an employer, only the employee portion shall be deducted. Note that the cost of the parent's coverage is included in this deduction if the parent is jointly covered with the children under a family policy.

(3) Pre-existing child support obligations. The amount(s) of any pre-existing court or administrative order(s) for child support shall be deducted from gross income to the extent payment is actually made under such order(s).

(4) Custodial parent disregard. The custodial parent is credited with a self-support reserve of \$500 per month. That amount shall be subtracted from the total gross income. The \$500 self-support reserve is an income disregard for the custodial parent. It allows the custodial parent to retain some income for personal purposes. The self-support reserve is set at the poverty level for one (1) individual.

(5) Adjusted monthly income. The deductions of Line 2, 3, and 4 shall be subtracted from the monthly gross income as entered on Line 1. The adjusted amount of income for each parent shall be entered on Line 5 in the appropriate column.

(6) Combined parental income. The monthly adjusted income amounts for both parents shall be added, and the total shall be entered on Line 6, Column C.

(7) Percentage of combined parental income. Each parent's percentage contribution to the combined parental income shall be determined. Divide each parent's adjusted monthly income figure on Line 5 by the total amount of Line 6, Column C. Enter the percentage amounts on Line 7.

(8) Base child support obligation. Using the total adjusted monthly parental income amount on Line 6, Column C, refer to the Chart of Child Support Obligations. The number of children refers to children for whom the parents share joint legal responsibility and for whom support is being sought. Enter the amount on the chart on Line 8. For combined monthly adjusted parental gross income amounts falling between amounts shown in the schedule, basic child support amounts shall be extrapolated.

(9) Child care costs. Child care costs, if any, incurred due to employment or job search of either parent, or incurred while receiving elementary or secondary education, or higher education or vocational training which will lead to employment, shall be listed on Line 9 of the worksheet. Such child care costs must be reasonable; that is, such costs shall not exceed the level required to provide quality care for the child(ren) from a licensed source. Child care costs required for active job search are allowable on the same basis as costs required in connection with employment.

(10) Total monthly child support and child care obligation. Add Lines 8 and 9 to obtain the total monthly child support and child care support obligation of both parents. Both parents share responsibility for this amount.

(11) Parental obligations. Each parent's share of the total monthly child support payment is figured using the total monthly obligation and the percentages calculated on Line 7. Multiply the amount on Line 10 by the percentage amounts on Line 7.

(12) Monthly child support obligation. The noncustodial parent's share of the total obligation shall be entered on Line 12. That

amount is the monthly payment for child support.

(13) Split custody. When each parent has physical custody of at least one (1) of the children, a theoretical support payment shall be determined for each parent for the children in the custody of the other. The obligations shall then be offset, with the parent owing the larger amount being required to pay the difference between the two (2) amounts to the other parent.

Section 2. Adjustments to the Monthly Award. (1) Adjustment for extended visitation with the noncustodial parent. The amount of the monthly payment may be adjusted by the court, if the child(ren) are in the physical custody of the noncustodial parent for a period of thirty (30) consecutive days or more. The monthly payment may be reduced to no more than half of the regular amount during the period of extended visitation. This adjustment does not refer to legal custody, but to periods of change in the child's physical custody. Changes in payment amount due to this adjustment do not appear on the worksheet, but are to be addressed in the court order.

(2) Adjustment for extraordinary medical expenses. Extraordinary medical expenses are costs for the treatment of an illness or injury which are not covered by insurance, and which exceed \$100 for a single period of illness, injury or condition. These may include costs which are necessary for the treatment of uninsured chronic medical problems, such as ear infections, asthma treatments, allergies, or orthodontic treatment. Parental responsibility for payment shall be split according to the percentages of parental contribution to combined parental income (see Line 7 of the worksheet). Payment responsibility shall be addressed in the court order, rather than included on the worksheet.

(3) Adjustment for extraordinary educational expenses. Payments for extraordinary educational expenses, such as the costs of special or private schooling, or for higher education must be approved by the court.

Section 3. Child Support Worksheet. The Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation, which is set out on the following pages, shall be used to calculate the monthly child support obligation.

Section 4. Guidelines Scales. The child support obligation shall be determined in accordance with the Commonwealth of Kentucky Basic Child Support Obligation, which is set out on the following pages. Upon a written finding that the amount calculated using the Basic Child Support Obligation guideline is unjust or inappropriate in a particular case citing one (1) or more of the following criteria, an appropriate adjustment of the guideline award may be made:

(1) A child's medical or dental needs or other extraordinary needs;

(2) A child's educational needs;

(3) A party's own extraordinary needs, such as medical expenses;

(4) Shared physical custody arrangements wherein each parent exercises physical custody for more than thirty (30) percent of the calendar year, defined as more than thirty (30) percent of all overnights during the year;

(5) The independent financial resources, if

any, of the child(ren);

(6) Combined parental income in excess of the Kentucky child support guideline;

(7) Any similar factor of an extraordinary nature specifically identified which would make application of the guidelines inappropriate.

(See forms as published with the ordinary regulation in this Administrative Register)

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 2, 1989

FILED WITH LRC: October 9, 1989 at 9 a.m.

REGULATIONS AS AMENDED BY ADMINISTRATIVE BODY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on October 4-5, 1989.

FINANCE AND ADMINISTRATION CABINET
(As Amended)

200 KAR 5:020. Finance and Administration Cabinet manual of policies and procedures.

RELATES TO: KRS Chapters 45, 45A

STATUTORY AUTHORITY: KRS 45.360(3)

NECESSITY AND FUNCTION: The Finance and Administration Cabinet is authorized by KRS 45.360(3) to promulgate administrative regulations to govern purchasing by various state agencies and to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This regulation implements the requirement that this manual be incorporated by reference as an administrative regulation.

Section 1. The purchasing policies and procedures of the Finance and Administration Cabinet contained in the "Finance and Administration Cabinet's Manual of Policies and Procedures", as amended October 4, 1989, is hereby adopted and incorporated by reference, the same as if set forth at length, in and as a part of the administrative regulations of the Finance and Administration Cabinet adopted pursuant to KRS Chapters 45 and 45A. The "Finance and Administration Cabinet's Manual of Policies and Procedures" will be available for public inspection and copying Monday through Friday, excluding state holidays, from 8:00 a.m. to 4:30 p.m., at the Office of Management and Fiscal Affairs, Room 222, Capitol Annex, Frankfort, Kentucky.

L. ROGERS WELLS, JR., Secretary

APPROVED BY AGENCY: August 11, 1989

FILED WITH LRC: August 15, 1989 at 10 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(As Amended)

201 KAR 8:015. Registration of dental laboratories and technicians with board.

RELATES TO: KRS 313.010(4)

STATUTORY AUTHORITY: KRS 313.220

NECESSITY AND FUNCTION: Establishes guidelines for registration of dental laboratories and dental laboratory technicians with the Board of Dentistry.

Section 1. Each dental laboratory owner, [commercial dental laboratory] and dental laboratory technician already currently engaged in dental laboratory technology on March 1, 1975, shall be granted a certificate of authority upon proper application and upon payment of the proper fee to the board as required by KRS Chapter 313, and these regulations.

Section 2. After March 1, 1976, the board shall not issue a certificate of authority to

any new commercial dental laboratory unless the applying dental laboratory [employs, or] is operated under the direct and continual supervision of one (1) [or more] certified dental technician[s]. Although a dental laboratory may employ any number of certified dental technicians, each dental laboratory shall have only one (1) certified dental technician supervising that dental laboratory. No certified dental technician shall supervise more than one (1) dental laboratory. A certified dental technician is an individual recognized as such by the "National Board for Certification" (official name of certifying agency). The board may place a dental laboratory or dental laboratory technician on probation, or deny, revoke, suspend, [probate,] or refuse to renew a certificate of authority to perform as a dental laboratory or as a dental laboratory technician upon the board's determination that an applicant, registrant, or certificate holder has violated any provision of KRS Chapter 313 or these regulations. Prior to the initiation of any action pertaining to the suspension, revocation, probation, or refusal to renew the certificate of authority to perform as a dental laboratory or as a dental laboratory technician, the board shall issue an order to cease and desist said violation. If [Should] the violation reoccurs after [despite] the issuance of such an order, the board shall take appropriate disciplinary action in accordance with KRS Chapter 313 and these regulations.

Section 3. Any individual having completed two (2) years of training or having acquired two (2) years of practical experience in dental laboratory technology by employment in either a licensed dentist's office or in a commercial dental laboratory, or an individual having a degree in dental laboratory technology from an accredited school upon the completion of a two (2) year course of study shall be classified as a dental laboratory technician and is required to obtain a certificate of authority from the board in order to practice dental laboratory technology. No [Nothing herein shall be construed to mean that any] employee, other than a dental laboratory technician, shall be [is] required to obtain a certificate of authority from the board.

Section 4. Each commercial dental laboratory shall pay a fee of fifty (50) dollars and each dental laboratory technician shall pay a fee of ten (10) dollars to the board before a certificate of authority shall be issued to the applicant.

Section 5. Upon the granting of a certificate of authority to perform as a dental laboratory, the board shall assign to that laboratory a registration number. The laboratory registration number shall appear on all invoices of the [said] laboratory.

Section 6. A dentist may use only the services of a commercial dental laboratory which is duly registered with the board as required by KRS

Chapter 313, and these regulations. If the board determines that a dentist has violated this regulation, the board shall issue an order pursuant to KRS 313.220(5) requiring that such dentist cease and desist said violation. If [Should] the violation reoccurs after [despite] the issuance of such an order, the board shall take appropriate disciplinary action in accordance with KRS Chapter 313, and these regulations.

Section 7. All commercial dental laboratories operating, doing business or intending to operate or do business within this state shall [be required to] register with the board and pay the [a] fee [as] required by the board. A dental laboratory shall be considered as operating or doing business in this state if its work product is prepared pursuant to a written authorization originating within this state.

R. B. THOMPSON, D.M.D., Executive Director
APPROVED BY AGENCY: July 31, 1989
FILED WITH LRC: August 1, 1989 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board for Proprietary Education
(As Amended)

201 KAR 24:040. Procedures for hearings.

RELATES TO: KRS Chapter 165A

STATUTORY AUTHORITY: KRS Chapter 13A, 165A.400

NECESSITY AND FUNCTION: KRS 13A.100 requires an administrative body which is empowered to promulgate administrative regulations to prescribe the procedures to be utilized in the conduct of hearings unless the [such] procedures are prescribed by a statute. KRS 165A.340(3) and 165A.400 authorize the board to promulgate regulations. KRS 165A.350(4)(b), 165A.360(3)(b) and 165A.370(4) provide for hearings, but do not prescribe procedures. This regulation establishes hearing procedures.

Section 1. Purpose and Rule of Construction. The purpose of this regulation is to enable the state Board for Proprietary Education to conduct an orderly and reasonably expeditious search for the truth while ensuring that due process is afforded to the licensee, applicant and students. Accordingly, this regulation shall be liberally construed so as to aid that process.

Section 2. Composition of the Hearing Panel.

(1) Disciplinary actions shall be heard by a hearing panel consisting of three (3) members of the board and a hearing officer appointed by the board.

(2) A board member who has participated in the investigation of a disciplinary action, or who has discussed the merits of an action with the agency staff, or who has personal knowledge of the facts giving rise to a disciplinary action shall not sit on a panel hearing that particular action.

(3) Staff members of the board, legal counsel for the board and a court stenographer shall be present for the hearing.

Section 3. Rights of the Licensee or Applicant. The licensee or applicant shall have the right to be heard by the hearing panel, to

be represented by legal counsel, to present evidence, to cross-examine witnesses presented by the board, and to make both opening and closing statements.

Section 4. Prehearing Disclosure of Evidence.

(1) By the board. The licensee or applicant shall have the right to inspect the investigative file relating to a disciplinary action either in person or by legal counsel. The names, addresses and phone numbers of witnesses expected to be called by the board and copies of documentary evidence intended to be introduced at the hearing shall be furnished to the licensee or applicant, or his attorney if represented by counsel, at least ten (10) days prior to the scheduled hearing date. Nothing in this section shall be construed as giving the licensee or applicant the right to examine or copy the personal notes, observations, or conclusions of the board's investigators, nor shall it be construed as allowing access to the work product of legal counsel for the board. The licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board.

(2) By the licensee or applicant. At least ten (10) days prior to the scheduled hearing date, the licensee or applicant shall furnish to the investigator or legal counsel for the board copies of any documents which the licensee or applicant intends to introduce at the hearing, and a list of the names, addresses and home and work telephone numbers of any witnesses to be presented to the hearing panel by the licensee or applicant. The licensee or applicant shall produce for inspection any items of tangible evidence within his possession or control which he intends to introduce at the hearing.

(3) At least the (10) days prior to the scheduled hearing date, the licensee or applicant shall file with the board a sworn written response to the specific allegations contained in the notice of charges. Allegations not [properly] answered or denied shall be deemed admitted. The panel may for good cause permit the late filing of an answer.

(4) Sanctions for failure to comply with prehearing disclosure. If [Should] a party fails to comply with this section, the panel hearing the disciplinary action may refuse to allow into evidence the [such] items or testimony that have not been disclosed, may continue the action to allow the opposing party a fair opportunity to meet the new evidence, or may make [such] other orders as it deems appropriate. Sanctions shall be applied by the board members of the panel.

(5) Continuing duty to disclose. After disclosure has been completed, each party shall remain under an obligation to disclose any new or additional items of evidence or witnesses which may come to its attention. [Such] Additional disclosure shall take place as soon as practicable. Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

(6) Authority to issue subpoenas. The board or the hearing officer appointed by it shall have the authority to issue subpoenas for the attendance of witnesses and the production of papers and records.

Section 5. Order of Proceeding. (1) The hearing officer shall call the meeting to order,

identify the parties to the action and the persons present and read the letter of notice and charges. The hearing officer shall ask the parties to state for the record any objections or motions. The board members of the panel shall rule upon any objections or motions. Opening statements shall then be made, with the attorney for the board proceeding first. Either side may waive its opening statement, but opening statements may not be reserved.

(2) The taking of proof shall commence with the calling of witnesses on behalf of the board. [Such] Witnesses shall be examined first by the attorney for the board, then by the licensee or applicant, or his attorney if represented by counsel, and finally by members of the hearing panel. Rebuttal examination of witnesses shall proceed in the same order. Documents or other items may be introduced into evidence as appropriate.

(3) Upon conclusion of the case for the board, the licensee or applicant shall call his witnesses. The [Such] witnesses shall be examined first by the licensee or applicant, or his attorney if represented by counsel, then by the attorney for the board, and finally by the members of the hearing panel. Rebuttal examination of those witnesses shall proceed in the same order. Documents or other evidence may be introduced as appropriate.

(4) At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney for the board always proceeding last. The hearing officer may impose reasonable limitations upon the time allowed for opening and closing statements.

(5) The hearing officer shall enforce general rules of conduct and expedite the hearing by keeping the testimony and exhibits relevant to the case.

Section 6. Rules of Evidence. (1) The hearing panel shall not be bound by the technical rules of evidence. The hearing panel may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and shall be authenticated only to the extent that the panel is satisfied as to its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(2) The panel retains the discretion to exclude any evidence which it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious. Rulings on objections to evidence shall be made by the board members of the panel.

Section 7. Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing, the panel shall retire into closed session for the purpose of deliberations. Each board member of the panel shall have one (1) vote.

(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a proposed decision including findings of fact and conclusions of law

consistent with the panel's deliberations and a recommended order to be submitted to the full board. A copy of the proposed decision shall be sent to the licensee or applicant, or his attorney if represented by counsel, by certified mail, to all members of the board and to the attorney for the board.

Section 8. Written Arguments or Exceptions to a Proposed Decision. The licensee or applicant shall have twenty (20) days from the date the proposed decision is mailed to file with the board written arguments or exceptions to any portion of the proposed decision. The twenty (20) day period may be extended at the discretion of the board president in unusual circumstances. The attorney for the board shall have ten (10) days from the expiration of the period allowed to the licensee or applicant to file responses on behalf of the board.

Section 9. Decision by the Board. (1) At the next scheduled regular meeting or as soon thereafter as may be arranged, the board shall review the proposed decision and consider the evidence presented, and, after consideration of any written arguments or exceptions which have been presented, shall make a final determination, as follows:

(a) Adopt the proposed decision as submitted; or

(b) Modify the proposed decision as deemed necessary; or

(c) Remand the cause to the hearing panel for further evidence.

(2) If the cause is remanded, the hearing panel shall:

(a) Schedule another hearing to obtain additional evidence; and

(b) The board shall consider the findings of fact and recommendations from the original hearing, any additional hearing and any additional written arguments or exceptions the parties have presented, and shall render its final decision in the case.

Section 10. Record to be Maintained. A transcript of the testimony taken during the hearing(s) shall be kept by the board. A copy of that transcript shall be available to the licensee or applicant from the court stenographer or, if the stenographer is unable to furnish a copy, from the board upon request and payment of the appropriate fee. A copy of the transcript of the hearings(s) shall be available to all board members. Any documents or exhibits introduced into evidence shall be kept with the transcript.

Section 11. Continuances. It is the policy of the board not to postpone cases which have been scheduled for hearings absent good cause. A request by a licensee or applicant for a continuance may be considered if communicated to the staff reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the board members of the panel. However, the burden is upon the licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

[Section 12. Hearing Fee. If the order of the board is adverse to a licensee or applicant, a hearing fee in an amount equal to the cost of stenographic services may be assessed against the licensee or applicant. The board in its discretion may waive all or part of the fee.]

Section 12. [13.] Copy to be Provided to Licensee or Applicant. A copy of this regulation shall be provided to the licensee or applicant prior to the hearing.

WILLIAM N. SANDERS, Chairman

APPROVED BY AGENCY: August 9, 1989

FILED WITH LRC: August 14, 1989 at 11 a.m.

TRANSPORTATION CABINET
Office of Aeronautics
(As Amended)

602 KAR 20:020. Issuance of landing area designation.

RELATES TO: KRS 183.090

STATUTORY AUTHORITY: KRS 183.024

NECESSITY AND FUNCTION: The Transportation Cabinet has the responsibility to inspect and to determine the safety and adequacy of all airport facilities in this state. This regulation establishes the procedures for the issuance of a certificate of approval for the use and operation of an airport facility and other matters related to the issuance of a Landing Area Designation.

Section 1. Definitions. (1) "Airplane" means an engine-driven, fixed-wing aircraft which is heavier than air and supported in flight by the dynamic reaction of air against its wings.

(2) "Landing area designation" means a certificate of approval of the safety and adequacy of an airport facility.

(3) "Rotorcraft" means a heavier-than-aircraft that principally depends for its support in flight on lift generated by one (1) or more rotors.

Section 2. [1.] Any airport in this state which has not been issued a landing area designation pursuant to the regulations of the cabinet, is [hereby declared] unfit as an airport facility, and the [such] airport facility shall not be used by any person for the taking off or [and] landing of aircrafts. Nor shall the person who owns or controls an [such] airport to which a current landing area designation has not been issued permit any person to use the facility for the landing or taking off of aircraft.

Section 3. [2.] Each airport facility in this state shall be inspected by an authorized representative of the Transportation Cabinet. All facilities classified as public use shall be annually inspected. [who shall issue a landing area designation to] An airport facility that meets the criteria set out in the regulations of the cabinet related to airport inspection shall be issued a landing area designation by the Transportation Cabinet.

Section 4. [3.] (1) Any landing area designation issued by the cabinet shall be valid for a period ending twelve (12) months from the

date of issue. The landing area designation of a restricted use facility may be renewed without a new inspection providing there are no changes detrimental to safety at the facility of which the cabinet is aware. A person who owns or controls a restricted use facility shall notify the cabinet of any change in ownership, use, operation, or facilities.

(2) The cabinet may revoke a landing area designation at any time when it is found that an airport no longer meets the standards and criteria set forth in the regulations of the cabinet.

Section 5. [4.] The person who owns or controls an airport facility shall display at all times the current landing area designation in a conspicuous place at his principal office at the airport at all times. If there is no office at the facility the airport owner shall keep the landing area designation and make it available for inspection upon request.

Section 6. [5.] All airports in this state shall be [are] classified as set forth in the regulations relating to KRS 183.090 and the [such] classification shall be stated on the landing area designation.

Section 7. The Transportation Cabinet may restrict the use of an airport to airplanes, rotorcraft or both. The cabinet may also establish other restrictions regarding the use of an airport. If the Transportation Cabinet restricts the use of an airport facility in any way, the restriction shall be noted on the landing area designation. No person shall use the airport facility for the taking off or landing of aircraft in violation of the restriction. Nor shall the person who owns or controls an airport which has been issued a restricted landing area designation permit any person to use the facility in violation of the restriction.

Section 8. If an airport facility was issued a landing area designation which was current on July 1, 1989 and if the airport facility at its most recent inspection met the safety criteria set forth in 602 KAR 20:030, it shall continue to be issued a landing area designation with the same classification by the Transportation Cabinet as long as safety conditions at the facility remain the same or improve. However, any limiting conditions to the normal operation of aircraft shall be noted on the landing area designation. If safety conditions at the airport deteriorate, the Transportation Cabinet shall reevaluate the airport classification and the landing area designation at the "grandfathered" airport.

Section 9. (1) 602 KAR 20:010. Definitions, is repealed.

(2) 602 KAR 20:025. Airport safety bulletin, is repealed.

(3) 602 KAR 20:050. Basic utility Stage I airports, is repealed.

(4) 602 KAR 20:060. Basic utility Stage II airports, is repealed.

(5) 602 KAR 20:070. General utility airports, is repealed.

(6) 602 KAR 20:080. Basic - general transport airports, is repealed.

BOB BODNER, Executive Director
 MILO D. BRYANT, Secretary
 APPROVED BY AGENCY: August 3, 1989
 FILED WITH LRC: August 11, 1989 at 9 a.m.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims
(As Amended)

803 KAR 25:100. Procedures for workers' compensation rehabilitation.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.260, 342.710

NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to promulgate such administrative regulations as it considers necessary to carry out its work and the work of the administrative law judges in accordance with the provisions of KRS Chapter 342s and 13A. KRS 342.710 requires the board to promulgate administrative regulations to effectuate the rehabilitation provisions contained therein and which will ensure early intervention; prompt and cost-efficient delivery of rehabilitation services and vigorous monitoring of qualified rehabilitation providers, facilities and agencies. The function of this proposed administrative regulation is to regulate the provision of rehabilitation services pursuant to KRS 342.260 and 710.

Section 1. Definitions. (1) ALJ is the administrative law judge assigned to a workers' compensation case.

(2) Association of Rehabilitation Nurses is a national organization which certifies nurses as certified rehabilitation registered nurses.

(3) Board is the Workers' Compensation Board.

(4) Board for Rehabilitation Certification (BRC) is a national organization which certifies rehabilitation counselors and nurses as certified insurance rehabilitation specialists and certified rehabilitation counselors.

(5) Catastrophic injury is:

- (a) A severe or traumatic spinal cord injury;
- (b) An amputation of a hand, leg, foot or arm;
- (c) A severe brain or closed-head injury;
- (d) Blindness; or
- (e) Second or third degree burns over twenty-five (25) percent or more of total body surface, or third degree burns to twenty-five (25) percent or more of the face or hands.

(6) Commissioner is the Commissioner of the Department of Workers' Claims.]

(6) [(7)] Commission on Accreditation of Rehabilitation Facilities (CARF) is a national organization which accredits rehabilitation facilities.

(7) [(8)] Directory of qualified rehabilitation facilities is the directory of facilities which have complied with certain licensure and accreditation standards. They have applied to be listed as resources to which injured employees are to be referred for a comprehensive medical and vocational evaluation after a designated period of temporary total disability.

(8) [(9)] Medical rehabilitation services are those medically oriented services, beyond basic medical, surgical and hospital treatment which are necessary for the accomplishment of feasible, practical and justifiable physical

rehabilitation goals. Such services shall continue for whatever period of time is necessary to accomplish such goals.

(9) [(10)] Qualified rehabilitation agency is the Office of Vocational Rehabilitation, Department of Education or Department for the Blind, Education and Humanities Cabinet.

(10) [(11)] A qualified rehabilitation coordinator (QRC) is an individual who is listed in the registry of qualified rehabilitation coordinators or registry of in-house qualified rehabilitation coordinators and is not a direct provider of therapeutic services.

(11) Qualified rehabilitation coordinator intern (QRC intern) is an individual who meets the educational but not the certification requirements of a QRC and is permitted a period of supervised employment under the guidance of a QRC.

(12) Qualified rehabilitation facility (QRF) is a rehabilitation facility or institution which may be either a freestanding facility or a rehabilitation unit or service in a general acute care hospital and which is listed in the directory of qualified rehabilitation facilities. It shall be licensed by the Division of Licensing, Office of Inspector General in the Cabinet for Human Resources to provide rehabilitation services and accredited by the Commission on Accreditation of Rehabilitation Facilities in one of the following areas: [to provide]

(a) Comprehensive inpatient rehabilitation; or [services and]

(b) Outpatient medical rehabilitation[; and [services]

(c) Vocational evaluation].

(13) Rehabilitation plan is a written proposal prepared by a qualified rehabilitation coordinator stating the rehabilitation goals to be met, the kinds and costs of services necessary to meet such goals, the names and addresses of the providers, and a justification for the recommended services.

(14) Rehabilitation services include both medical rehabilitation services and vocational rehabilitation services provided pursuant to KRS 342.710.

(15) Suitable employment is employment which is reasonable taking into consideration the injured employee's age, education, previous employment, place of resident and limitations.

(16) Vocational rehabilitation services are those vocationally related services which are necessary to restore an injured employee to suitable employment.

Section 2. Responsibilities. (1) The employer/carrier shall provide prompt and appropriate rehabilitation services to injured employees in accordance with KRS 342.710 and the administrative regulations of the Workers' Compensation Board.

(2) Injured employees shall be entitled to rehabilitation services to help them accomplish reasonable physical rehabilitation goals and to help them return to suitable employment, and shall be responsible for accepting such services in accordance with KRS 342.710 and the administrative regulations of the Workers' Compensation Board.

(3) An employee's reasonable costs incurred for travel, board and lodging when rehabilitation requires the employee to be away from his customary residence shall be paid for

by the defendants.

Section 3. Application for Listing in Directory of Qualified Rehabilitation Facilities. (1) To apply for listing in the directory of qualified rehabilitation facilities, a rehabilitation facility or institution shall submit an application as provided by the board and such supporting documentation as may be required. Qualified rehabilitation facilities shall also provide such information as may be deemed necessary by the board for monitoring purposes.

(2) Provisional listing in the directory of qualified rehabilitation facilities may be granted by the board to a facility which is licensed through the Cabinet for Human Resources to provide rehabilitation services but whose application to CARF for accreditation is pending. The board may grant provisional listing in the directory upon receipt of an application accompanied by a copy of an application which has been submitted to CARF for accreditation in comprehensive inpatient rehabilitation or outpatient medical rehabilitation. The provisional listing shall be valid for one (1) year unless CARF accreditation is granted or denied prior thereto. [In the event a facility's programs have not been in operation for sufficient duration to be submitted for a CARF survey, the board may grant a provisional listing in the directory based upon the facility's intent to submit the programs for a CARF survey and accreditation. If accreditation is denied, the facility shall lose its provisional listing and may not reapply for listing in the directory of qualified rehabilitation facilities until such accreditation is obtained.]

(3) An out-of-state facility or institution may apply for listing in the directory of qualified rehabilitation facilities provided it meets similar licensure requirements through the appropriate state licensing agency and also meets the same CARF accreditation requirements.

Section 4. Registry of Qualified Rehabilitation Coordinators. (1) To apply for listing in the registry of qualified rehabilitation coordinators, an individual shall submit an application as provided by the board and submit such supporting documentation as the board may require. A QRC shall also provide such information as the board may require for monitoring purposes. An applicant may be employed by a qualified rehabilitation agency in the public sector such as the Office of Vocational Rehabilitation or Department for the Blind, or may be employed in the private sector.

(2) A QRC may be a rehabilitation nurse or a rehabilitation counselor who has complied with the following educational and certification requirements:

(a) Rehabilitation nurse. A rehabilitation nurse must be:

1. A registered nurse with a current Kentucky license; and

2. Certified as a certified rehabilitation registered nurse by the Association of Rehabilitation Nurses or certified as a certified insurance rehabilitation specialist by the Board for Rehabilitation Certification.

(b) Rehabilitation counselor. A rehabilitation counselor must have attained the following educational credentials:

1. A doctorate or master's degree in rehabilitation counseling, or a related field, as defined by the BRC; or

2. A baccalaureate degree in rehabilitation counseling, or related field, as determined by the board; and

3. Certified as a certified rehabilitation counselor or as a certified insurance rehabilitation specialist by the Board for Rehabilitation Certification.

(3) An individual who does not meet the certification qualifications contained in this section may apply for permission to work under the direct supervision of a QRC to obtain the experience required for the appropriate certification examination. During this period of supervised employment, such individual shall be designated a QRC intern. Any forms or reports prepared by a QRC intern must be approved and signed by the supervising QRC. [be granted a provisional listing in the registry of qualified rehabilitation coordinators or registry of in-house qualified rehabilitation coordinators by the board if such individual is currently functioning as a coordinator of rehabilitation services and has been functioning in such manner for a period of at least three (3) years prior to July 1, 1988. Provided, however, that such individual shall satisfy the certification requirements contained in subsection (2) of this section within twelve (12) months from the effective date of this administrative regulation.]

(4) Upon meeting the experience requirement, the QRC intern shall apply to sit for the next available appropriate certification examination and shall notify the board in writing within seven (7) days of being informed of the test scores. A candidate who receives a passing score may immediately apply to the board for registration as a QRC. A candidate who did not receive a passing score shall be permitted one (1) more attempt to achieve a passing score at the next examination for which the candidate is eligible to participate. A QRC intern who fails two (2) certification examinations shall no longer be eligible to work as a QRC intern but may apply for registration as a QRC upon achieving the appropriate certification.

(5) An individual who resides out of state may apply for listing in the registry of qualified rehabilitation coordinators or registry of in-house qualified rehabilitation coordinators provided the individual meets the qualifications in subsection (2) of this section except that an individual who will be working as a rehabilitation nurse shall be a registered nurse with a current nurse license in the state where that individual will be working.

(6) An individual who is employed by a qualified rehabilitation facility or a medical rehabilitation provider shall not be eligible to apply for listing in the registry of qualified rehabilitation coordinators or registry of in-house qualified rehabilitation coordinators.

Section 5. Registry of In-house Qualified Rehabilitation Providers. (1) Nothing in this regulation shall prevent self-insured employers, self-insured groups or workers' compensation insurance carriers from referring injured employees to a QRC on their staff, provided that rehabilitation services are provided in the manner prescribed in this regulation.

(2) In-house qualified rehabilitation

coordinators shall be subject to the same qualification and reporting requirements as rehabilitation nurses and counselors listed in the registry of qualified rehabilitation coordinators.

Section 6. Continuing Education Requirements.

(1) The board may require a QRC to attend training sessions at such times and places as the board deems necessary.

(2) A QRC who, without good cause, fails to attend training sessions required by the board may be removed from the registry of qualified rehabilitation coordinators or registry of in-house qualified rehabilitation coordinators.

Section 7. Request for Registration Renewal.

(1) By July 15th of each year, a QRC shall submit a letter to the board requesting registration renewal. The letter shall also list all pertinent continuing education attained by title, location, dates, and provider which was completed the previous twelve (12) month period ending June 30. The letter shall also list by name, address, telephone number, social security number, and board file number all workers' compensation claimants who were served during that same time period.

(2) A QRC who, without good cause, fails to submit a request for registration renewal with all required information shall be removed from the registry of qualified rehabilitation coordinators or registry of in-house qualified rehabilitation coordinators.

(3) A QRC who does not list any workers' compensation claimants served in two (2) consecutive requests for registration renewal shall be removed from the registry of qualified rehabilitation coordinators or registry of in-house qualified rehabilitation coordinators.

(4) The types of services provided by a QRC include but are not limited to:

(a) Assistance with assessment of current level of medical care and needs.

(b) Assistance with discharge planning, follow-up services, and assessment of future rehabilitation needs.

(c) Assistance with assessment of need for referral for medical rehabilitation services.

(d) Serving as liaison between physicians, patient, family, employer/carrier, attorney.

(e) Assessment of home modification and vehicle modification requirements.

(f) Assistance with arrangements for transfers, attendant care, medical supplies and equipment.

(g) Patient and family education regarding the employee's injury.

(h) Assistance with medical clarification and general coordination of medical rehabilitation services.

(i) Vocational evaluation.

(j) Vocational counseling.

(k) Job analysis.

(l) Job modification.

(m) Job placement.

(n) Referral for diagnostic vocational and psychological testing.

(o) Determining vocational goals and writing rehabilitation plans outlining services and costs needed to attain such goals.

(p) General coordination of vocational services.

Section 8. Provision of Rehabilitation

Services. (1) It shall be the responsibility of the employer/carrier to identify injured employees who may benefit from rehabilitation services and to provide appropriate rehabilitation services pursuant to KRS 342.710 and relevant administrative regulations.

(2) Referral of injured employees for coordination of rehabilitation services shall be made by the employer/carrier only to QRCs.

[(3)] The QRC shall assist with the arrangement for medical rehabilitation services by referral to qualified rehabilitation facilities listed in the directory of qualified rehabilitation facilities.]

(3) [(4)] In the event the employer/carrier fails to refer an injured employee for rehabilitation services pursuant to KRS 342.710, the injured employee, or anyone acting in his behalf, may file a written request for rehabilitation services.

(4) [(5)] If the dispute cannot be resolved voluntarily, interlocutory relief may be sought in the manner prescribed by the board.

(5)(a) Medical rehabilitation services and expenses therefore shall be deemed to begin subsequent to an evaluation at a QRC and in accordance with a rehabilitation plan, and such medical rehabilitation services shall be provided in health facilities licensed to provide rehabilitation services by the Cabinet for Human Resources pursuant to KRS Chapter 216B, or by practitioners who meet applicable licensure, certification or registration requirements in their area of practice, as set out hereinafter.

(b) Unless the employee and employer/carrier agree otherwise, medical rehabilitation services for employees with spinal cord injuries, brain injuries, or chronic pain problems shall be provided only in CARF accredited programs in the corresponding area of need:

1. Spinal cord injury programs.

2. Brain injury programs.

3. Chronic pain management programs.

(c) A work hardening program, in addition to the criteria in paragraph (a) of this subsection shall meet the following criteria:

1. It must provide a transition for the injured employee between curative medical services and a safe return to work by providing a gradually progressive combination of individualized physical conditioning tasks and job simulated activities which are available on an eight (8) hour per day five (5) day per week basis.

2. The program in its application shall identify the individual who shall be the responsible person for the Department of Workers' Claims, the employer/carrier, the QRC and referral sources to contact for an explanation of individual employee programs, progress and cost.

3. Services in a work hardening program shall be provided by licensed physical therapists or licensed occupational therapists, within the respective discipline and licensure authority of licensed physical therapists and licensed occupational therapists, in accordance with KRS 327.010(1) and KRS 319A.010(2) respectively or under their direct supervision or substantially in their presence.

4. Prior to admission to a work hardening program, the facility shall have on file recent medical information which documents the injured employee's impairment and which indicates

medical recovery to a level which will permit participation in the program.

5. For each injured employee admitted to a work hardening program, an individualized goal-oriented plan shall be developed subsequent to a functional capacity evaluation performed by a physician, physical therapist, or occupational therapist which measures and documents the injured employee's capacity to perform essential work elements in relation to a specific job, occupational group, or general competitive employment.

6. Equipment and job simulation tasks used in work hardening programs shall meet the injured employee's specific physical conditioning and occupational needs.

7. Written discharge summaries shall be provided to the referral source within seven (7) days of the discharge date.

(6) The criteria for a work hardening program, as set forth in subsection (5)(c) of this section, shall be interpreted by the board in determining whether to grant or deny an application, based on the corresponding standards as set by CARF, as more specifically set out in the 1989 CARF Standards Manual, pages 69-72, III. F., paragraphs 1, 2, 5, 6, 10, 11.a.b.c.d.i., 13, 14, 17 and 18 and incorporated herein by reference. Copies of this material may be reviewed at the Department of Workers' Claims, Perimeter Park West, 1270 Louisville Road, Building C, Frankfort, Kentucky 40601; phone number 502-564-5550, Monday through Friday, 8 a.m. - 4:30 p.m. A representative of the board shall conduct an on-site visit at each applicant facility prior to the board's decision to grant or deny listing in the directory of medical rehabilitation providers.

(7) Facilities proposing to provide medical rehabilitation services covered in subsection (5)(b) and (c) of this section shall submit an application to the board for listing in the directory of medical rehabilitation providers. The employee may select the facility listed in the directory where medical rehabilitation services are to be provided. No dispute as to the selection of a medical rehabilitation provider shall be grounds for the employer/carrier to terminate disability benefits then being paid to the employee. Should a dispute as to the selection of a medical rehabilitation provider occur, the procedure to be followed is for the employer/carrier to file a motion for adjudication of the dispute before the Department of Workers' Claims. Such motion will be assigned to an administrative law judge for resolution of such dispute.

(a) Facilities proposing to provide services in spinal cord injury programs, brain injury programs, and chronic pain management programs shall submit in addition to the application: a copy of their license granted by the Cabinet for Human Resources pursuant to KRS Chapter 216B and a copy of the appropriate CARF accreditation certificate. The board may grant provisional listing in the directory of medical rehabilitation providers upon receipt of an application accompanied by a copy of an application which has been submitted to CARF for accreditation in spinal cord injury programs, brain injury programs, or chronic pain management programs. The provisional listing shall be valid for one (1) year unless CARF accreditation is granted or denied prior thereto.

(b) Facilities proposing to provide a work

hardening program shall submit in addition to the application, a copy of their CARF accreditation certificate in work hardening, or the following information:

1. A copy of the current facility license, if required pursuant to KRS Chapter 216B; and

2. A listing of all equipment used, and square footage of space in the work hardening area; and

3. A list of personnel assigned to the work hardening area, their job descriptions and a copy of the current license of all physical therapists and occupational therapists; and

4. Four (4) case reports which document substantial compliance with subsection (5)(c) of this section.

(8) Physical therapy and occupational therapy services of a general nature provided to assist in the restoration of normal bodily function, after illness or injury, including the use of massage, hydrotherapy, therapeutic exercise, and other common therapeutic services such as ultrasound and electrotherapy and other modalities, within the respective discipline and licensure authority of licensed physical therapists and licensed occupational therapists, in accordance with KRS 327.010(1) and KRS 319A.010(2) respectively shall be considered medical treatment and not medical rehabilitation services, irrespective of the provisions of subsection (5)(a), (b), and (c) of this section.

(9) The cost of medical rehabilitation services provided to workers' compensation claimants pursuant to subsection (5)(b) and (c) of this section shall not exceed the cost of the same services for an individual paying for the services himself.

Section 9. Referral of Injury Cases. (1)(a) Catastrophic injury case. A catastrophic injury case shall be referred to a QRC by the employer/carrier immediately following the occurrence of such injury or within a period not to exceed fifteen (15) days following the employer/carrier's knowledge [occurrence] of such injury.

(b) Referral of a catastrophic injury case shall be made on a form provided by the board. At the time of referral, the employer/carrier shall send the original and one (1) copy of the referral form to the board and one (1) copy to the QRC to whom the case is assigned.

(c) Within seven (7) days of receipt of a catastrophic injury case referral, the QRC shall submit an initial report which shall contain a summary of the current level of medical care and needs and a summary of long-term rehabilitation needs including referral of appropriate cases to a QRF. The QRC shall send the original report and one (1) copy to the board and a copy to the employer/carrier.

(2) Other injury cases. If an injured employee has forty-five (45) days of temporary total disability and has not previously been referred to a QRC, then within seven (7) days thereafter the employer/carrier shall submit a report to the board which contains:

(a) The name, address and telephone number of the QRC to whom the case has been assigned; or

(b) A statement from the injured employee's treating physician that, following maximum medical improvement, the injured employee will be able to resume his usual customary employment or other suitable employment and a projected date of return to such employment; or

(c) A statement from the injured employee's

treating physician that the injured employee is so seriously impaired that he would not benefit from vocational rehabilitation services; or

(d) A statement that the injured employee voluntarily elects not to be referred to a QRC because of retirement plans.

(3) When an injured employee is referred to a QRF pursuant to Section 10(1) of this regulation, the employer/carrier shall at the same time refer him to a QRC.

Section 10. Referral to Qualified Rehabilitation Facilities. (1) If an injured employee previously designated to return to work at maximum medical improvement has not returned to work within (90) days of entitlement to payment of temporary total disability, and unless the employee and employer/carrier agree that progress is being made toward the employee's return to work, [and his treating physician has not certified he may return to work within thirty (30) more days.] [or does not have a return to work date projected by the treating physician,] then within seven (7) days thereafter he shall be referred to a QRF near the employee's residence or to a different QRF which is mutually acceptable to the employee and the employer/carrier [of the employer/carrier's choice] for an evaluation of the employee's medical status and any need for [medical] rehabilitation services. [If the treating physician has certified the employee may return to work within 120 days of temporary total disability, and the employee does not so return to work, then within seven (7) days thereafter the employer/carrier shall refer the employee to a QRF of the employer/carrier's choice for an evaluation of the employee's medical status and any need for rehabilitation services.]

(2) For each case referred to a QRF, the employer/carrier shall submit to the board a statement of costs incurred for the evaluation at the QRF on a form provided by the board.

(3) The employer/carrier shall also submit semiannual reports to the board, on forms supplied by the board, which summarize all expenditures incurred for medical rehabilitation services. Said reports shall begin as of January 1, 1990.

Section 11. Limitations on Duties of Qualified Rehabilitation Coordinators. (1) On any case to which an individual is assigned as a QRC he shall be prohibited from performing any claims investigation or claims adjusting functions such as:

(a) Scheduling medical, vocational, or rehabilitation evaluations for the purpose of securing adverse testimony; or

(b) Discussing settlements.

(2) A QRC shall not interpret workers' compensation law for injured employees other than to explain the role of a QRC and to discuss rehabilitation services and procedures pursuant to KRS 342.710 and relevant administrative regulations.

(3) Absent the written permission of the physician, chiropractor, osteopath, psychologist, or other medical personnel and the injured employee, the QRC shall not be present in the examination area or treatment area during examination or treatment of the injured employee.

Section 12. Rehabilitation Plan. (1) If the QRC determines the injured employee is unlikely

to resume suitable employment without the intervention of vocational rehabilitation services, within thirty (30) days of receipt of the referral, he shall submit a rehabilitation plan on a form provided by the board which shall list the vocational goal to be met, the kinds and costs of services necessary to meet that goal, the names and addresses of the providers of such services, and a justification for the recommended services.

(2) The rehabilitation plan shall be accompanied by copies of relevant documentation on which the vocational goal is based.

(3) If additional services not listed on the original rehabilitation plan become necessary, the QRC shall submit rehabilitation plan amendments.

(4) All rehabilitation plans and rehabilitation plan amendments shall be signed by the injured employee, the QRC and the employer/carrier.

(5) In the event a rehabilitation plan cannot be developed within thirty (30) days, then in lieu of the rehabilitation plan, the QRC shall submit a progress report which summarizes activities, problems, and progress. Such progress reports shall be submitted every thirty (30) days until a rehabilitation plan is submitted and every sixty (60) days thereafter until the injured employee returns to work, or until vocational rehabilitation services are discontinued.

(6) The original and one (1) copy of each rehabilitation plan, rehabilitation plan amendment, and progress report shall be submitted to the board by the QRC. The QRC shall also submit a copy to the employer/carrier and the injured employee.

Section 13. Submission of Final Report by Qualified Rehabilitation Coordinator. (1) The QRC shall submit a final report to the board a copy of which shall be sent by the QRC to the employer/carrier and employee, which shall include a description of the job to which the injured employee has returned, his rate of pay, the name and address of the employer, or the reason vocational rehabilitation services were discontinued, and such other information as may be required.

(2) The final report shall include the total costs of vocational rehabilitation services by category and source, such as: tuition, books, fees, room, board, and transportation, and any other categories required by the board. The final report shall also include a summary of the services provided by the QRC and the total charges billed to the employer/carrier by the QRC.

(3) The final report shall be submitted within thirty (30) days of case closure and final billing.

Section 14. (1) All forms required herein shall be provided by the board upon request and at no charge to the party requesting the forms at the following address: Department of Workers' Claims, Perimeter Park West, 1270 Louisville Road, Building C, Frankfort, Kentucky 40601; phone number is 502-564-5550 and our office hours are Monday through Friday, 8 a.m. - 4:30 P.m.

(2) Forms R1 (10/89), R2 (10/89), R3 (10/89), R4 (10/89), R5 (10/89), R6 (10/90), R7 (10/89), R8 (10/89), R9

(10/89), R10 (10/89), R11 (10/89), R12 (10/89), R13 (10/89), [and] R14 (10/89), [and] R15 (10/89), R16 (10/89), R17 (10/89), and R18 (10/89) are hereby adopted by reference.

ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: June 6, 1989

FILED WITH LRC: June 7, 1989 at noon

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(As Amended)

804 KAR 9:010. Retail liquor license limit.

RELATES TO: KRS 241.060, 241.065, 241.075, 243.030

STATUTORY AUTHORITY: KRS 241.060

NECESSITY AND FUNCTION: [The express provision of] KRS 241.060(2) authorizes [enables] the ABC Board to limit the number of licenses to be issued in any county of the Commonwealth. This regulation establishes the basis of this [such a] limitation and establishes the manner in which the population of a county is to be ascertained for purposes of the number of licenses in a [that] county.

Section 1. The number of retail package liquor licenses issued by the Alcoholic Beverage Control Board in any county [counties] of the Commonwealth shall not exceed a number equal to one (1) for every 2,300 persons resident [in such county].

Section 2. (1) The number of retail drink liquor licenses issued by the Alcoholic Beverage Control Board in any county [counties] of the Commonwealth shall not exceed a number equal to one (1) for every 2,500 persons resident, [in such county; provided, however:]

(2) [(1) That in its discretion] the Alcoholic Beverage Control Board may issue retail drink licenses in excess of the number [herein] provided in subsection (1) of this section if [where] the license is:

(a) For an outlet in a hotel, inn or motel for accommodation of the traveling public; and

(b) [is] Designed primarily to serve [such] transient patrons.

(c) An [, and any] applicant [for such license] shall submit to the Board satisfactory proof that the facility shall [facilities will] accommodate sufficient patrons to sustain the operation of a retail drink outlet. The facility [, which] shall contain:

1. Not less than fifty (50) sleeping units;

2. Dining facilities for not less than 100 persons; [and which]

3. Receives not less than fifty (50) percent of its gross annual alcoholic beverage and food receipts from the sale of food; and

4. Have not less than 25,000 square feet of parking space.

(3) [(2) That in its discretion] The Alcoholic Beverage Control Board may issue retail drink licenses in excess of the number [herein] provided in subsection (1) of this section if [where] the license is for an outlet in an airport terminal where commercial flights are made in or near cities of the first, second or third class [except] in wet [dry] counties.

(4) [(3) That in its discretion] The Alcoholic Beverage Control Board may issue retail drink licenses in excess of the number [herein] provided in subsection (1) of this section if [where] the license is for a restaurant;

(a) Which receives fifty (50) percent [sixty (60) percent] or more of its gross annual alcoholic beverage and food income from the sale of food; and

(b) Has a minimum seating capacity of 100 people at tables.

(c) An [, and any] applicant [for such license] shall submit to the Board:

1. Satisfactory proof that the facility meets [facilities meet] the above criteria; and

2. [, including, but not limited to,] A certification of seating capacity by the applicable fire marshal's office or its equivalent. [, and provided further, that] Upon application for renewal, the licensee shall submit an annual report to the Board indicating annual gross receipts from the sale of food and the sale of alcoholic beverages.

(5) [(4)] Licenses issued under these exceptions shall [are] not be transferred [subject to transfer] to other premises.

Section 3. (1) [In order that a fixed and approved standard of population as prescribed in Sections 1 and 2 of this regulation may be adopted,] The estimates of population for Kentucky counties prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, shall be used in every year except a census year to determine the number of licenses prescribed by this regulation. The United States Government census figures of population shall be used in a census year.

(2) On or before January 1 of each year, the Alcoholic Beverage Control Board shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for those counties in which license quotas may need to be reviewed by the Board. Upon receipt of these estimates from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, the Alcoholic Beverage Control Board, shall within thirty (30) days, send a specific notice to the newspaper with the largest circulation in each county where the estimate justifies a change in that county's quota, and issue a release of this information to the general press. The Department of Alcoholic Beverage Control shall accept applications for [such] new quota licenses for a period of thirty (30) days following the date of publication in the [said] newspaper of each county affected.

Section 4. This regulation shall not prohibit renewal of licenses. The present quota shall be reduced, in conformance with this regulation, as licenses are revoked or surrendered.

LANNY COMBS, Commissioner

APPROVED BY AGENCY: July 18, 1989

FILED WITH LRC: July 19, 1989 at 10 a.m.

CABINET FOR HUMAN RESOURCES
Office of the Inspector General
(As Amended)

902 KAR 20:280. Standards for prescribed pediatric extended care.

RELATES TO: KRS 216.875, 216.880, 216.885

STATUTORY AUTHORITY: KRS 216.042, 216.890

NECESSITY AND FUNCTION: KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health facilities and health services. KRS 216.890 mandates that the Kentucky Cabinet for Human Resources promulgate standards to regulate prescribed pediatric extended care (PPEC) services.

Section 1. Definitions. (1) "Developmentalist" is a master's prepared individual with current experience in transdisciplinary evaluation and treatment planning for children who are at risk for or experiencing developmental delay.

(2) [(1)] "Protocol of care" is the comprehensive plan for implementation of medical, nursing, psychosocial, developmental, and educational therapies to be provided by the PPEC. An individualized protocol of care shall be developed upon admission and shall be revised to include recommended changes in the therapeutic plans. The disposition to be followed in the event of emergency situations shall be specified in the protocol of care.

(3) [(2)] "Prescribing physician" is the physician, licensed pursuant to KRS 311.571, who signs the order admitting the child to the PPEC.

(4) [(3)] "Primary physician" is the physician, licensed pursuant to KRS 311.571, who maintains overall responsibility for the child's medical management and is available for consultation and collaboration with the PPEC staff.

(5) [(4)] "Medical director" is a board certified pediatrician who serves as the liaison between the PPEC and the medical community, reviews the quality and appropriateness of PPEC services, and is available for consultation to the PPEC staff.

(6) [(5)] "Nursing director" is a licensed registered nurse, pursuant to KRS 314.041, responsible for providing continuous supervision of PPEC services and managing the daily operations of the facility.

(7) [(6)] "Occupational therapist" means a person who is licensed pursuant to KRS [Chapter] 319A.080.

(8) [(7)] "Speech pathologist" means a person who is licensed pursuant to KRS [Chapter] 334A.050.

(9) [(8)] "Social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Worker Education.

(10) [(9)] "Physical therapist" means a person who is licensed pursuant to KRS [Chapter] 327.050.

(11) [(10)] "Child life specialist" is an individual with baccalaureate preparation in child life, early childhood education, or a related field and current experience in planning and implementing developmental stimulation programs for children.

Section 2. Scope of Operation and Services.

The prescribed pediatric extended care (PPEC) center is a nonresidential health care service which provides an important link in the continuum of care for medically or technologically dependent children. The (PPEC) center provides the following triad of necessary services for dependent children and their parents: day health care, developmental interventions, and parental training.

Section 3. Applicability. (1) All prescribed pediatric extended care facilities shall be equipped and staffed to accommodate no fewer than three (3) medically/technologically dependent children and shall meet standards established herein.

(2) All PPEC facilities shall have a minimum full-time equivalent staff of two (2) registered nurses and one (1) nursing assistant. Thereafter, the ratio of staff to children shall be maintained at:

<u>3-12 children</u>	<u>2 RN's plus 2 others</u>
<u>13-18 children</u>	<u>3 RN's plus 3 others</u>
<u>19-24 children</u>	<u>4 RN's plus 4 others</u>

[one (1) RN staff for every six (6) children; or one (1) staff (LPN or nursing assistant) to every three (3) children.]

Section 4. Criteria for Admission. (1) Infants and children considered for admission to the PPEC facility shall be those with complex medical conditions requiring continual care, including but not limited to, supplemental oxygen, ventilator dependence, cystic fibrosis, apnea, spinal cord injury and malignancy, etc.

(2) Children with risk of infection shall not be admitted unless authorized by the prescribing physician.

(3) The primary physician, in consultation with the parent(s) or legal guardian(s), shall recommend placement in a PPEC facility, taking into consideration the medical, emotional, psychosocial and environmental factors.

(4) The child shall be medically stabilized, require ongoing nursing care, and other interventions.

Section 5. Preadmission Conference. (1) If the child meets the admission criteria, the primary physician or his/her designate shall contact the medical or nursing director of the PPEC to schedule a preadmission conference.

(a) If the child is hospitalized at the time of referral, preadmission planning shall include the parent(s) or guardian(s), relevant hospital medical, nursing, social services and developmental staff to assure that the discharge plans shall be accommodated following placement in the PPEC.

(b) If the child is not hospitalized at the time of referral, preadmission planning shall be conducted with the primary physician, parent(s) or guardian(s), PPEC representatives and representatives of other relevant agencies as determined by the primary physician, and nursing director of the PPEC.

(c) Preadmission planning shall be scheduled within seventy-two (72) hours and allow sufficient time to assure that the therapeutic plan can be implemented upon placement in the PPEC.

(d) The protocol for care shall be developed by the PPEC staff following preadmission

planning.

(e) The protocol for care shall include specifications of criteria for discharge from the PPEC.

(2) A consent form, outlining the purpose of a PPEC facility, family responsibilities, authorized treatment and appropriate liability releases, and emergency disposition plans shall be signed by the parent(s) or guardian(s) and witnessed prior to admission to the PPEC facility. The parent(s) or guardian(s) and the PPEC facility shall be provided a copy of the consent form.

Section 6. Admission Procedure. (1) Infants and children shall be considered for admission to the PPEC facility if they have complex medical conditions requiring skilled nursing care, e.g., children with conditions including but not limited to, supplemental oxygen, ventilator dependence, cystic fibrosis, apnea, spinal cord injury and malignancy, etc.

(2) In consultation with the parent(s) or legal guardian(s), a child may be referred to the PPEC medical or nursing director for determination of placement.

(3) All children placed in the PPEC facility shall have documentation of a physician's written order placed in the child's medical record. A copy of the order shall be provided to the child's parent(s) or guardian(s).

(4) Prior to placement, preadmission planning conferences shall be held for the purpose of developing a protocol for care.

(5) The protocol for care shall be developed under the direction of the PPEC nursing director and shall specify the treatment plan needed to accommodate the medical, nursing, psychosocial and educational needs of the child and family. Specific goals for care shall be identified. Plans for achieving the goals shall be determined and a schedule for evaluation of progress shall be established. The protocol shall include specific discharge criteria.

(6) The protocol shall be signed by the physician, authorized representative of the PPEC and parent(s) or guardian(s). Copies of the protocol shall be given to the parent(s) or guardian(s). Copies of the protocol shall be given to the parent(s) or guardian(s) primary physician, PPEC staff and other agencies as appropriate.

(7) A consent form, outlining the purpose of a PPEC facility, family responsibilities, authorized treatment, appropriate liability releases, and emergency disposition plans shall be signed by the parent(s) or guardian(s) and witnessed prior to admission to the PPEC facility. The parent(s) or guardian(s) and the facility shall be provided a copy of the consent form.

Section 7. Provision of Services. (1) Medical staff services.

(a) Children shall be admitted to the PPEC upon prescription by the child's primary physician or by the medical director.

(b) The child's primary physician shall maintain responsibility for the overall medical therapeutic plan and shall be available for consultation and collaboration with the PPEC medical and nursing personnel.

(c) The medical director shall participate in reviews of the protocol for care. Prescribed therapies shall be adjusted in consultation with

the primary physician to accommodate the child's condition.

(d) The PPEC shall coordinate the prescribed therapies for the child.

(2) Nursing staff services.

(a) A PPEC nursing staff member shall participate in preadmission planning.

(b) Nursing personnel, under the direction of the nursing director, shall be responsible for implementing the nursing care.

(c) Nursing personnel shall be responsible for monitoring and documenting the effects of prescribed therapies.

(d) Nursing personnel shall inform the primary physician and medical director of the results of therapeutic interventions.

(e) Nursing personnel shall participate in interdisciplinary staffings regarding the child's progress.

(f) Nursing personnel shall assure that the PPEC provides an environment conducive to the stabilization of the child's medical condition and the promotion of the child's development.

(g) Nursing personnel shall be responsible for maintaining the child's record in accordance with facility policies and procedures.

(h) Nursing personnel shall instruct the parent(s) or guardian(s) in how to provide the necessary therapies in the home.

(3) Developmental services.

(a) Each child shall have a functional assessment and an individualized program plan to accommodate the child's developmental needs. The following functional areas shall be included as appropriate: self care, communication skills, social skills, motor skills, preacademic areas, play with toys/objects, growth and development appropriate for age.

(b) The child's program plan shall include specific programs and action steps to facilitate developmental progress and shall be reviewed at least quarterly.

(c) The child's developmental and educational needs shall be incorporated into the protocol for care.

(d) The child's program plan shall include:

1. Measurable goals in need areas or goals to enhance and normalize independent functioning in daily activities.

2. A description of the patient's strengths and present performance level with respect to each goal;

3. Skill areas in priority order;

4. Anticipatory planning for specific areas identified as at-risk for future problems.

(e) The child life specialist shall participate in regularly scheduled interdisciplinary staffings.

(f) A program for parent(s) or guardian(s) shall be provided to prepare parent(s) or guardian(s) to accommodate the child's developmental needs.

(g) The PPEC shall provide parent(s) or guardian(s) education services by including them in care-related conferences and teaching them how to perform necessary therapies and how to meet the developmental and psychosocial needs of their child at home.

(h) PPEC staff shall make referrals to appropriate resources, facilitate access to community, social, educational and financial services, and shall provide counseling to enhance coping skills, interpersonal relationships and family functioning.

(4) Nutritional services.

(a) Therapeutic diets shall be maintained in the patients file.

(b) [(a) If needed,] The services of a registered dietitian shall be available regarding the nutritional needs, the [and] special diets of individual children, and to assist in the development of policies and procedures for the handling, serving, and storage of food.

(c) [(b)] All food and formula except for specialized formula shall be provided by PPEC staff under the supervision of the nursing director.

(d) [(c)] Prepared foods shall be kept under refrigeration with identifying dates and patient names.

Section 8. Quality Assurance. (1) The PPEC center shall ensure that there is an effective, quality assurance program to evaluate the provision of patient care.

(2) The quality assurance program shall be ongoing and have a written plan of implementation.

(a) All organized services related to patient care, including services furnished by a contractor, shall be evaluated, semiannually.

(b) Nosocomial infections and medication therapy shall be evaluated.

(c) Evidence of parent(s) or guardian involvement shall be evaluated semiannually.

Section 9. Administration. (1) The administrative structure of the PPEC shall include a policy and procedure manual which reveal all operational aspects of the service.

(2) Personnel policies and procedures shall specify qualifications and required ratios of staff members employed by PPEC and shall include: a current personnel file, positions descriptions, employee benefits, policies for overtime, compensatory time, performance evaluations, termination of employment.

(3) A formal orientation and development program is required for all PPEC employees and staff.

(4) The facility shall be administered on a sound financial basis consistent with good business practice. Financial records which identify all income by source and describe all expenditures by category in such a manner as to be auditable by commonly recognized procedures.

(5) Policies and procedures pertaining to PPEC services shall be available to the public and shall include:

(a) A procedure manual with specifications for each therapeutic intervention shall be available for use by all staff involved in the care of the children; the manual shall be reviewed every six (6) months to assure that procedures conform to prevailing and acceptable treatment modalities.

(b) An admission and discharge register, listing clients admitted by name with identifying information about each and the source from which the child was admitted, the reason for disposition, adequate identifying information and the place to which the individual is to be discharged;

(c) A daily census record;

(d) An accident and incident record;

(e) A complete medical and nursing history shall be maintained for each child;

(f) Periodic review of each child's protocol of care to update the protocol in consultation with other professionals involved in the child's

care. Changes in the orders shall be documented and signed by the primary physician;

(g) Prior to a discharge, conferences involving PPEC staff, the primary physician, the parent(s) or guardian(s) and staff of other agencies involved in the patient's care shall be held to discuss postdischarge care and follow-up;

(h) A discharge order written by the primary physician shall be documented and entered in the child's record. A discharge summary, which includes the reason for discharge, shall also be included in the record.

(i) Except in emergency situations, other agencies involved in the care of the patient/family shall be notified prior to the discharge date.

(j) The center shall have linkage agreements through written agreements with providers of other levels of care which may be medically needed to supplement the services available at the center.

(k) The center shall have written policies which assure the reporting of cases of abuse, neglect, or exploitation of children to the Cabinet for Human Resources pursuant to KRS 199.335.

Section 10. Personnel. (1) A board certified pediatrician shall serve as the medical director for the PPEC facility. Responsibilities shall include:

(a) Participation in preadmission planning to establish a protocol of care with the primary physician, parent(s) or guardian(s) and staff of the PPEC center;

(b) Periodic review of services to assure acceptable levels of quality;

(c) Maintenance of a liaison role with the medical community;

(d) Advisement on the development of new programs and modifications of existing programs; and

(e) Assurance that medical consultation shall be available in the event of his/her absence.

(2) A nursing director shall be employed to provide continuous supervision of PPEC services and shall be responsible for daily operations of the facility.

(a) In addition the nursing director shall be responsible for:

1. All services rendered at the center;

2. Personnel management;

3. Organization and implementation of in-service education programs for staff;

4. Assistance to medical director in determining patient eligibility for admission to PPEC;

5. Assurance of adequate nursing representation at preadmission conference; and

6. Supervision of all patient records and documentation of center's activities to assure compliance to rules and regulations.

(b) Credentials and training.

1. Registered nurse with a current license in the state of Kentucky.

2. Nursing services shall be provided within their respective scope of practice pursuant to KRS Chapter 314 and any regulations promulgated thereunder.

3. The nursing director shall have at least two (2) years nursing experience of which six (6) months shall have been spent in a pediatric intensive care or neonatal intensive care setting during the previous five (5) years.

(3) Staffing.

(a) The PPEC center shall employ nursing and ancillary staff that are necessary to provide the services essential to the center's operation.

(b) There shall be an individual personnel record for each person employed by the center which includes the following:

1. Resume with employee's training and experience;
2. Evidence of current licensure or registration;
3. Reports of all accidents occurring on duty; and
4. Current certification in basic life support.

(c) The following categories of personnel shall be available to the PPEC on an in-house or consultant basis:

1. Developmentalist.
2. [1.] Child life specialist.
3. [2.] Occupational therapist.
4. [3.] Physical therapist.
5. [4.] Speech pathologist.
6. [5.] Social worker.

Section 11. In-service Training for Staff/Parents and Guardian(s). (1) Monthly staff development programs appropriate to the category of personnel shall be conducted to maintain quality patient care.

(2) All staff development programs shall be documented.

(3) All personnel shall be expected to maintain current certification in basic life support.

(4) Each new employee shall participate in orientation to acquaint the employee with the philosophy, organization, program, practices, and goals of the PPEC facility.

(5) A comprehensive orientation to acquaint the parent(s) and/or guardian(s) with the philosophy and services shall be provided at the time of the child's placement in the PPEC.

(6) Staff development programs shall be provided to:

(a) Facilitate the ability of the staff to function as a member of an interdisciplinary team which includes health professionals and the parent(s) and/or guardian(s).

(b) Improve communication skills to facilitate a collaborative relationship between parent(s) and/or guardian(s) and professionals.

(c) Increase understanding the effects childhood illness has on the child's development and the parent(s) and/or guardian(s).

(d) Increase understanding and coping with the effects of childhood illnesses and shall cover a variety of topics including: issues of death and dying; awareness of services available at the hospital, school, community, state, and professional organizations, and fostering of advocacy skills.

(e) Develop case management skills to assist the family in setting priorities and planning and implementing the child's care at home.

(f) Provide training in the implementation of new technology.

(g) Develop a comprehensive protocol for care which includes the medical, nutritional, developmental and psychosocial needs of medically/technologically dependent children.

(h) Prepare for management of emergency situations.

Section 12. Physical Environment. (1) The building shall be suitable for the purpose intended and should maintain a minimum of sixty

(60) square feet of space per child, exclusive of kitchen, bathroom, storage areas, stairways, unfinished basements and attics.

(2) The ventilation system shall be designed and balanced to provide the general pressure relationships shown in Table 1, Section 14 of this regulation.

(3) The lighting levels for the facility shall comply with the requirements in Table 2, Section 14 of this regulation.

(4) Plumbing approval. Prior to licensure and relicensure, all specifications shall be approved by the Kentucky Division of Plumbing, Department of Housing, Buildings and Construction.

(5) Transportation. Emergency transportation to a hospital (with a pediatric unit) shall be achieved in ten (10) minutes or less.

(6) Unless medically contra-indicated, the facility shall be maintained as a temperature range of seventy-two (72) degrees to eighty (80) degrees Fahrenheit.

(7) [(1)] Accessibility. The PPEC shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(8) [(2)] Fire safety. The PPEC shall be approved by the Fire Marshal's office before licensure and relicensure is granted by the licensure agency.

(9) [(3)] Housekeeping and maintenance services.

(a) Housekeeping. The center shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

(b) Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

1. The center shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair.

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair.

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

4. A pest control program shall be in operation in the centers pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

5. Sharp wastes, including needles, scalpels, razors or other sharp instruments used for patient care procedures shall be segregated from other wastes and aggregated in puncture resistant containers immediately after use. Needles and syringes shall not be recapped, cut, dismantled, or destroyed after use, but shall be placed intact directly into a puncture resistant container. The containers of sharp wastes shall either be incinerated, on site or off site, or rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

6. The center shall establish a written policy

for the handling and disposal of all infectious, pathological, and contaminated waste if the center generates them. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

a. Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness. A bag, when full, shall not exceed twenty-five (25) pounds. All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the center from which the waste is being removed and shall be attached to the bag in a conspicuous manner.

b. The following wastes shall be disposed of by incineration or, be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

Section 13. Emergency Procedures. (1) A copy of the current annual fire inspection report, shall be on file with the licensing agency.

(2) There shall be a working telephone, which is neither locked nor a pay station, in the center.

(3) Emergency telephone numbers shall be posted on or in the immediate vicinity of all telephones.

Section 14. Appendix.

TABLE 1 - PRESSURE RELATIONSHIPS AND VENTILATION FOR PPEC CENTERS

<u>Area Designation</u>	<u>Pressure Relationship to Adjacent</u>	<u>Minimum Air Changes of Out-door Air Per Hour</u>	<u>Minimum Total Air Changes Per Hour</u>
<u>Patient room</u>	0	1	4
<u>Patient area corridor</u>	0	2	4
<u>Treatment room</u>	0	2	4
<u>Physical therapy and hydrotherapy if applicable</u>	N	2	=
<u>Dining and recreation areas</u>	0	2	4
<u>Soiled workroom</u>	N	2	4
<u>Clean workroom</u>	P	2	4
<u>Toilet room</u>	N	=	10
<u>Bedpan room if applicable</u>	N	=	10
<u>Bathroom</u>	N	=	10
<u>Janitor's closet</u>	N	=	10
<u>Linen and trash chute rooms</u>	N	=	10
<u>Food preparation center</u>	0	2	10
<u>Dishwashing area</u>	N	=	10
<u>Dietary day storage</u>	0	=	2
<u>Laundry, general</u>	0	2	10
<u>Soiled linen sorting and storage</u>	N	=	10
<u>Clean linen storage</u>	P	2	2

P=Positive N=Negative 0=Equal ==Optional

TABLE 2 - LIGHTING LEVELS FOR PPEC CENTERS

<u>Area</u>	<u>Foot-candles*</u>
<u>Administrative and lobby areas, day</u>	50
<u>Administrative and lobby areas, night</u>	20
<u>Corridors and interior ramps</u>	20
<u>Corridor night lighting</u>	3
<u>Dining area and kitchen</u>	30
<u>Doorways</u>	10
<u>Exit stairways and landings</u>	5
<u>Janitor's closet</u>	15
<u>Nurses' station, general, day</u>	50
<u>Nurses' station, general, night</u>	20
<u>Nurses' desk, for charts and records</u>	70
<u>Nurses' medicine cabinet</u>	100
<u>Patient care unit (or room), general</u>	10
<u>Patient care room, reading</u>	30
<u>Recreation area (floor level)</u>	50
<u>Stairways other than exists</u>	30
<u>Toilet and bathing facilities</u>	30
<u>Utility room, general</u>	20
<u>Utility room, work counter</u>	50

*Minimum on task at any time

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 1, 1989

FILED WITH LRC: September 5, 1989 at 11 a.m.

CABINET FOR HUMAN RESOURCES Department for Employment Services Division of Unemployment Insurance (As Amended)

903 KAR 5:010. Application for employer account [Employer's registration numbers]; reports.

RELATES TO: KRS 341.190

STATUTORY AUTHORITY: KRS 194.050, 341.115

NECESSITY AND FUNCTION: This regulation requires each employing unit to make application for an employer account [a registration number] and to make other additional reports as required by the division.

Section 1. Each employing unit having in the state in covered employment one (1) or more workers shall request from [make application by letter to] the Division of Unemployment Insurance an "Application for Unemployment Insurance Employer Reserve Account" (UI-1), and shall submit this form to the division providing all information requested in the instructions to this form. [for a registration number. Such letter shall contain the full name or names of the owners, the trade name, if any, under which the business is operated, the date such employing unit commenced business, and a statement as to whether the business was new or purchased from another employing unit.]

Section 2. Each employing unit shall make [such] additional reports as [are] required on the forms prescribed by the division in accordance with the instructions contained on the forms [thereon]. These forms include UI-IS Supplemental Application for Unemployment Insurance Employer Reserve Account (Rev. 3/87), UI-3 Employer's Quarterly Unemployment Wage and Tax Report (Rev. 2/88), UI-3R Reimbursing

Employer's Quarterly Unemployment Wage Report (Rev. 4/88), UI-3S Employer's Quarterly Unemployment Wage and Tax Substitute Report (Rev. 5/87), UI-3X Employer's Quarterly Unemployment Wage and Tax Report (yellow express envelope) (Rev. 5/89), UI-3.1A Summary Contribution Report (Rev. 4/87), UI-3.2 Request to Place Subject Employer's Account in Inactive Status (Rev. 3/84), UI-14B Employer Schedule of Wage Report Adjustments (Rev. 4/84), UI-21 Report of Change of Ownership or Discontinuance of Business in Whole or Part (Rev. 8/89), UI-35 Termination of Coverage Report (Rev. 7/83), UI-47 Claim for Refund of Contributions (Rev.

1/88), UI-74 Application for Partial Payment Agreement (Rev. 4/88), UI-412A Employer's Notice of Initial Claim (Rev. 7/89) and are incorporated by reference the same as if reproduced in full herein. These forms are on file for public inspection in the Office of the Commissioner for Employment Services, 275 E. Main Street, 2W, Frankfort, Kentucky 40621.

DARVIN ALLEN, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: August 9, 1989

FILED WITH LRC: August 14, 1989 at 11 a.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 31:040. Lists of hazardous wastes.

RELATES TO: KRS 224.830 through 224.877,
224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033,
224.864(3), 224.867

NECESSITY AND FUNCTION: KRS 224.864(3)
requires the cabinet to identify the
characteristics of and to list hazardous wastes.
This chapter identifies and lists hazardous
waste. This regulation establishes the lists of
hazardous wastes.

Section 1. General Applicability and Delisting
Procedures. (1) A waste is a hazardous waste if
it is listed in any section of this regulation
unless it has been excluded from that list under
401 KAR 31:060 and 31:070.

(2) The cabinet shall [will] indicate the
basis for listing the classes or types of wastes
listed in this regulation by employing one (1)
or more of the following Hazard Codes:

Hazard Code	Class or Type of Waste
(I)	Ignitable waste
(C)	Corrosive waste
(R)	Reactive waste
(E)	EP toxic waste
(H)	Acute hazardous waste
(T)	Toxic waste

401 KAR 31:160 identifies the constituent
which caused the cabinet to list the waste as an
EP toxic waste (E) or toxic waste (T) in
Sections 2 and 3 of this regulation.

(3) Each hazardous waste listed in this
regulation is assigned an EPA Hazardous Waste
Number, which precedes the name of the waste.
This number shall [must] be used in complying
with the notification requirements of KRS
224.864 and certain recordkeeping and reporting
requirements under 401 KAR Chapters 32 through
40.

(4) The following hazardous wastes listed in
Section 2 or 3 of this regulation are subject to
the exclusion limits for acutely hazardous
wastes established in Section 5 of 401 KAR
31:010: EPA Hazardous Waste Nos. F020, F021,
F022, F023, F026, and F027.

Section 2. Hazardous Wastes from Nonspecific
Sources. Hazardous wastes from nonspecific
sources are:

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
Generic: F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloro- ethylene, methylene chloride, 1,1,1-trichloroethane, carbon	(T)

tetrachloride, and chlorinated
fluorocarbons; all spent
solvent mixtures/blends used
in degreasing containing, before
use, a total of ten (10) percent
or more (by volume) of one (1)
or more of the above halogenated
solvents or those solvents
listed in F002, F004, and F005;
and still bottoms from the
recovery of these spent solvents
and spent solvent mixtures.

F002 The following spent halogenated (T)

solvents: tetrachloroethylene,
methylene chloride, trichloro-
ethylene, 1,1,1-trichloro-
ethane chlorobenzene, 1,1,2-
trichloro-1,2,2-trifluoroethane,
orthodichlorobenzene, trichloro-
fluoromethane, and 1,1,2-
trichloroethane; all spent
solvent mixtures/blends
containing, before use, a total
of ten (10) percent or more
(by volume) of one (1) or more
of the above halogenated solvents
or those solvents listed in
F001, F004, and F005; and the
still bottoms from the recovery
of these spent solvents and spent
solvent mixtures.

F003 The following spent nonhalogenated (I)*

solvents: xylene, acetone, ethyl
acetate, ethyl benzene, ethyl
ether, methyl isobutyl ketone,
n-butyl alcohol, cyclohexanone,
and methanol; all spent
solvent mixtures/blends
containing, before use, only
the above spent nonhalogenated
solvents; and all spent solvent
mixtures/blends containing,
before use, one (1) or
more of the above nonhalogenated
solvents, and, a total of ten
(10) percent or more (by volume)
of one (1) or more of those
solvents listed in F001, F002,
F004, and F005; and the still
bottoms from the recovery of
these spent solvents and spent
solvent mixtures.

F004 The following spent nonhalogenated (T)

solvents: cresols and cresylic acid,
and nitrobenzene; all spent solvent
mixtures/blends containing, before
use, a total of ten (10) percent
or more (by volume) of one (1) or
more of the above nonhalogenated
solvents or those solvents listed
in F001, F002, and F005; and the
still bottoms from the recovery
of these spent solvents and spent
solvent mixtures.

F005 The following spent nonhalogenated (I,T)

solvents: toluene, methyl ethyl
ketone, carbon disulfide, isobu-
tanol, pyridine, benzene, 2-
ethoxyethanol, and 2-
nitropropane; all spent solvent
mixtures/blends containing,
before use, a total of

	ten (10) percent or more (by volume) of one (1) or more of the above nonhalogenated solvents, or those solvents listed in F001, F002, and F004; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures.				component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.	
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	(T)		F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)
F007	Spent cyanide plating bath solutions from electroplating operations.	(R,T)		F024	Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor clean-out wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one (1) to five (5), utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent desiccants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in Section 2 of this regulation.)	(T)
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	(R,T)				
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	(R,T)				
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	(R,T)		F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.	(H)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	(R,T)				
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	(T)				
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum.	(T)		F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.)	(H)
F020	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)		F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.	(T)
F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives.	(H)		* (I,T) <u>shall</u> [should] be used to specify mixtures containing ignitable and toxic constituents.		
F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or	(H)		Section 3. Hazardous Wastes from Specific Sources. Hazardous wastes from specific sources are:		
				Industry and		
				EPA Hazardous	Hazardous	Hazard
				Waste No.	Waste	Code
				Wood Preservation:		
				K001	Bottom sediment sludge from the treatment of wastewaters from	(T)

	wood preserving processes that use creosote [and/]or pentachlorophenol.		K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	(T)
Inorganic Pigments:			K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	(T)
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	(T)	K026	Stripping still tails from the production of methy ethyl pyridines.	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	(T)	K027	Centrifuge and distillation residues from toluene diisocyanate production.	(R,T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	(T)	K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	(T)
K005	Wastewater treatment sludge from the production of chrome green pigments.	(T)	K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	(T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).	(T)	K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	(T)
K007	Wastewater treatment sludge from the production of iron blue pigments.	(T)	K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	(T)
K008	Oven residue from the production of chrome oxide green pigments.	(T)	K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.	(T)
Organic Chemicals:			K083	Distillation bottoms from aniline production.	(T)
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	(T)	K103	Process residues from aniline extraction from the production of aniline.	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	(T)	K104	Combined wastewater streams generated from nitrobenzene/aniline production.	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	(R,T)	K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	(T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	(R,T)	K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	(T)
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	(T)	K111	Product wash waters from the production of dinitrotoluene via nitration of toluene.	(C,T)
K015	Still bottoms from the distillation of benzyl chloride.	(T)	K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	(T)	K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	(T)	K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K018	Heavy ends from the fractionation column in ethyl chloride production.	(T)	K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	(T)	K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	(T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	(T)	K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	(T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	(T)	K118	Spent adsorbent solids from purification of ethylene dibromide in the production of	(T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	(T)			
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	(T)			
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	(T)			
K093	Distillation light ends from the production of phthalic anhydride from orthoxylene.	(T)			

K136	ethylene dibromide via bromination of ethene. Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)	K126	production of ethylenebisdithiocarbamic acid and its salts. Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	(T)
Inorganic Chemicals:			Explosives:		
K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.	(T)	K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	(R)
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	(T)	K045	Spent carbon from the treatment of wastewater containing explosives.	(R)
K106	Wastewater treatment sludge from the mercury cell process in chlorine production.	(T)	K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	(T)
Pesticides:			K047	Pink/red water from TNT operations.	(T)
K031	By-product salts generated in the production of MSMA and cacodylic acid.	(T)	Petroleum Refining:		
K032	Wastewater treatment sludge from the production of chlordane.	(T)	K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	(T)	K049	Slop oil emulsion solids from the petroleum refining industry.	(T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	(T)	K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	(T)
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	(T)	K051	API separator sludge from the petroleum refining industry.	(T)
K035	Wastewater treatment sludges generated in the production of creosote.	(T)	K052	Tank bottoms (leaded) from the petroleum refining industry.	(T)
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	(T)	Iron and Steel:		
K037	Wastewater treatment sludges from the production of disulfoton.	(T)	K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	(T)
K038	Wastewater from the washing and stripping of phorate production.	(T)	K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	(C,T)
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	(T)	Primary Copper:		
K040	Wastewater treatment sludge from the production of phorate.	(T)	K064	<u>Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production.</u>	(T)
K041	Wastewater treatment sludge from the production of toxaphene.	(T)	Primary Lead:		
K098	Untreated process wastewater from the production of toxaphene.	(T)	K065	<u>Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities.</u>	(T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	(T)	Primary Zinc:		
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	(T)	K066	<u>Sludge from treatment of process wastewater or acid plant blowdown from primary zinc production.</u>	(T)
K099	Untreated wastewater from the production of 2,4-D.	(T)	Primary Aluminum:		
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	(T)	K088	<u>Spent potliners from primary aluminum reduction.</u>	(T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	(C,T)	Ferroalloys:		
K125	Filtration, evaporation, and centrifugation solids from the	(T)	K090	<u>Emission control dust or sludge from ferrochromiumsilicon production.</u>	(T)
			Secondary Lead:		
			K069	Emission control dust/sludge from secondary lead smelting.	(T)

K100 Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting. (T)

Veterinary Pharmaceuticals:

K084 Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds. (T)

K101 Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds. (T)

K102 Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organoarsenic compounds. (T)

Ink Formulation:

K086 Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead. (T)

Coking:

K060 Ammonia still lime sludge from coking operations. (T)

K087 Decanter tank tar sludge from coking operations. (T)

Section 4. Discarded Commercial Chemical Products, Off-specification Species, Container Residues, and Spill Residues Thereof. The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Section 2(1)(b)1 of 401 KAR 31:010, when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

(1) Any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of this section.

(2) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (5) or (6) of this section.

(3) Any residue remaining in a container or in an inner liner removed from a container that has held [been used to hold] any commercial chemical product or manufacturing chemical intermediate having the generic names listed in subsection (5) of this section, unless the [or any] container is empty as defined in Section 7(2)(c) of 401 KAR 31:010. [or inner liner removed from a container that has been used to hold any off-specification chemical product and

manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (5) of this section unless:]

[(a) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate; or]

[(b) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or]

[(c) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.]

(4) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in subsection (5) or (6) of this section, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any off-specification chemical intermediate which, if it met specification, would have the generic name listed in subsection (5) or (6) of this section.

(5) The commercial chemical products, manufacturing chemical intermediate or off-specification commercial chemical products referred to in subsections (1) through (4) of this section, are identified as acute hazardous wastes (H) and are subject to the limited quantity generator exclusion defined in Section 5 of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound is only listed for acute toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance	Chemical Abstracts No.
P023	Acetaldehyde, chloro-	107-20-0
P002	Acetamide, N-(Aminothioxy-methyl)-	591-08-2
P057	Acetamide, 2-fluoro-	640-19-7
P058	Acetic acid, fluoro-, sodium salt	62-74-8
[P066	Acetimidic acid, N-((methyl-carbamoyl)-oxy)thio-, methyl ester]	16752-77-5
P001	3-(alpha-acetonyl-benzyl)-4-hydroxycoumarin and salts, when present at concentrations greater than 0.3%	81-81-2
P002	1-acetyl-2-thiourea	591-08-2
P003	Acrolein	107-02-8
P070	Aldicarb	116-06-3
P004	Aldrin	309-00-2
P005	Allyl alcohol	107-18-6
P006	Aluminum phosphide (R,T)	20859-73-8
P007	5-(aminomethyl)-3-isoxazolol	2763-96-4
P008	4-[alpha-]Aminopyridine	504-24-5
P009	Ammonium picrate (R)	131-74-8
P119	Ammonium vanadate	7803-55-6
P099	Argentate (1-), bis(cyano-C)-, potassium	506-61-6

P010	Arsenic acid H_3AsO_4	7778-39-4	P051	2,7:3,6-Dimethanonaphth(2,3-b), oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1alpha, 2beta, 2abeta, 3alpha, 6alpha, 6abeta, 7beta, 7aalpha)-, and metabolites	72-20-8
P012	Arsenic oxide As_2O_3	1327-53-3			
P011	Arsenic oxide As_2O_5	1303-28-2			
P011	Arsenic pentoxide	1303-28-2			
P012	Arsenic trioxide	1327-53-3			
P038	Arsine, diethyl	692-42-2			
P036	Arsonous dichloride, phenyl-	696-28-6			
P054	Aziridine	151-56-4	P044	Dimethoate	60-51-5
P067	<u>Aziridine, 2-methyl-</u>	<u>75-55-8</u>	[P045]	3,3-Dimethyl-1-(methylthio)-2-butanone, O-((methylamino)-carbonyl) oxime]	39196-18-4
P013	Barium cyanide	542-62-1			
P024	Benzenamine, 4-chloro-	106-47-8	P046	alpha, alpha-Dimethylphenethylamine	122-09-8
P077	Benzenamine, 4-nitro-	100-01-6			
P028	Benzene, (chloromethyl)-	100-44-7	P047	4,6-Dinitro-o-cresol and salts	534-52-1
P042	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)-	51-43-4	P048	2,4-Dinitrophenol	51-28-5
P046	Benzeneethanamine, alpha, alpha-dimethyl-	122-09-8	P020	Dinoseb	88-85-7
P014	Benzenethiol	108-98-5	P085	Diphosphoramidate, octamethyl-	152-16-9
P001	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts when present at concentrations greater than 0.3%	81-81-2	P111	<u>Diphosphoric acid, tetraethyl ester</u>	<u>107-49-3</u>
			P039	Disulfoton	298-04-4
P028	Benzyl chloride	100-44-7	P049	[2,4-]Dithiobiuret	541-53-7
P015	Beryllium [dust]	7440-41-7	P050	Endosulfan	115-29-7
[P016]	Bis(chloromethyl) ether	542-88-1]	P088	Endothal	145-73-3
P017	Bromoacetone	598-31-2	P051	Endrin	72-20-8
P018	Brucine	357-57-3	P051	<u>Endrin, and metabolites</u>	<u>72-20-8</u>
P045	<u>2-Butanone, 3,3-dimethyl-1-(Methylthio)-, O-(methylamino) carbonyl) oxime</u>	<u>39196-18-4</u>	P042	Epinephrine	51-43-4
			P031	<u>Ethanedinitrile</u>	<u>460-19-5</u>
P021	Calcium cyanide	592-01-8	P066	<u>Ethanimidothioic acid, N-(((methylamino)car-bonyl)oxy)-, methyl ester</u>	<u>16752-77-5</u>
P021	<u>Calcium cyanide $Ca(CN)_2$</u>	<u>592-01-8</u>	P101	Ethyl cyanide	107-12-0
[P022]	Carbon bisulfide	75-15-0]	P054	Ethylenimine	151-56-4
P022	Carbon disulfide	75-15-0	P097	Famphur	52-85-7
P095	Carbonic dichloride	75-44-5	P056	Fluorine	7782-41-4
P023	Chloroacetaldehyde	107-20-0	P057	Fluoroacetamide	640-19-7
P024	p-Chloroaniline	106-47-8	P058	Fluoroacetic acid, sodium salt	62-74-8
P026	<u>1-(o-Chlorophenyl)thiourea</u>	<u>5344-82-1</u>	P065	Fulminic acid, mercury (2+) salt (R,T)	628-86-4
P027	<u>3-Chloropropionitrile</u>	<u>542-76-7</u>	P059	Heptachlor	76-44-8
P029	Copper cyanide	544-92-3	[P060]	Hexachlorohexahydro-endo, endo-dimethanonaphthalene]	465-73-6
P029	<u>Copper cyanide $Cu(CN)$</u>	<u>544-92-3</u>	P062	Hexaethyl tetraphosphate	757-58-4
P030	Cyanides (soluble cyanide salts), not otherwise specified	-----	P116	Hydrazinecarbothioamide	79-19-6
			P068	Hydrazine, methyl	60-34-4
P031	Cyanogen	460-19-5	P063	Hydrocyanic acid	74-90-8
P033	Cyanogen chloride	506-77-4	P063	Hydrogen cyanide	74-90-8
P033	<u>Cyanogen chloride $(CN)_2$</u>	<u>506-77-4</u>	P096	Hydrogen phosphide	7803-51-2
P034	2-Cyclohexyl-4,6-dinitrophenol	131-89-5	[P064]	Isocyanic acid, methyl ester	624-83-9]
P016	<u>Dichloromethyl ether</u>	<u>542-88-1</u>	P060	Isodrin	465-73-6
P036	Dichlorophenylarsine	696-28-6	P007	3(2H)-Isoxazolone, 5-(amino-methyl)-	2763-96-4
P037	Dieldrin	60-57-1			
P038	Diethylarsine	692-42-2	P092	Mercury, (acetato-0) phenyl-	62-38-4
P041	Diethyl-p-nitrophenyl phosphate	311-45-5	P065	Mercury fulminate (R,T)	628-86-4
			P082	Methanamine, N-methyl-N-nitroso-	62-75-9
P040	0,0-Diethyl 0-pyrazinyl phosphorothioate	297-97-2	P064	<u>Methane, isocyanato-</u>	<u>624-83-9</u>
P043	Diisopropyl fluorophosphate (DFP)	55-91-4	P016	Methane, oxybis (chloro-	542-88-1
P004	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha, 4abeta, 5alpha, 8alpha, 8abeta)-	309-00-2	P112	Methane, tetranitro-(R)	509-14-8
			P118	Methanethiol, trichloro-	75-70-7
P060	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha, 4abeta, 5beta, 8beta, 8abeta)-	465-73-6	P050	6,9-Methano-2,4,3-benzodioxathiepen, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	115-29-7
			P059	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8
P037	2,7:3,6-Dimethanonaphth(2,3-b) oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1alpha, 2beta, 2alpha, 3beta, 6beta, 6alpha, 7beta, 7aalpha)-	60-57-1	P066	Methomyl	16752-77-5
			[P067]	2-Methylaziridine	75-55-8]
			P068	Methyl hydrazine	60-34-4
			P064	Methyl isocyanate	624-83-9
			P069	2-Methylactonitrile	75-86-5
			P071	Methyl parathion	298-00-0
			P072	alpha-Naphthylthiourea	86-88-4
			P073	Nickel carbonyl	13463-39-3
			P073	Nickel carbonyl <u>Ni(CO)₄</u> (T-4)-	13463-39-3

P074	Nickel Cyanide	557-19-7	P008	4-Pyridinamine	504-24-5
P074	Nickel cyanide $\text{Ni}(\text{CN})_2$	557-19-7	P075	Pyridine, [(S)]-3-(1-methyl-2-pyrrolidinyl)-, (S)-, and salts	54-11-5
P075	Nicotine and salts	54-11-5	[P111	Pyrophosphoric acid, tetra-ethyl ester]	107-49-3
P076	Nitric oxide	10102-43-9	P103	Selenourea	630-10-4
P077	p-Nitroaniline	100-01-6	P104	Silver cyanide	506-64-9
P078	Nitrogen dioxide	10102-44-0	P104	Silver cyanide $\text{Ag}(\text{CN})$	506-64-9
P076	Nitrogen oxide NO	10102-43-9	P105	Sodium azide	26628-22-8
P078	Nitrogen oxide NO_2	10102-44-0	P106	Sodium cyanide	143-33-9
P081	Nitroglycerine (R)	55-63-0	P106	Sodium cyanide $\text{Na}(\text{CN})$	143-33-9
P082	N-Nitrosodimethylamine	62-75-9	P107	Strontium sulfide	1314-96-1
P084	N-Nitrosomethylvinylamine	4549-40-0	P107	Strontium sulfide SrS	1314-96-1
P074	Nickel cyanide	557-19-7	P108	Strychnidin-10-one, and salts	57-24-9
P085	Octamethylpyrophosphoramidate	152-16-9	P018	Strychnidin-10-one, 2, 3-dimethoxy	357-57-3
P087	Osmium oxide OsO_4 , (T-4)-	20816-12-0	P108	Strychnine and salts	57-24-9
P087	Osmium tetroxide	20816-12-0	P115	Sulfuric acid, dithallium [(I)] salt	7446-18-6
P088	7-Oxabicyclo (2.2.1)heptane-2,3-dicarboxylic acid	145-73-2	P109	Tetraethyldithiopyrophosphate	3689-24-5
P089	Parathion	56-38-2	P110	Tetraethyl lead	78-00-2
P034	Phenol, 2-cyclohexyl-4, 6-dinitro-	131-89-5	P111	Tetraethylpyrophosphate	107-49-3
P048	Phenol, 2, 4-dinitro	51-28-5	P112	Tetranitromethane (R)	509-14-8
P047	Phenol, 2-methyl-4,6-dinitro-and salts	534-52-1	P062	Tetraphosphoric acid, hexa-ethyl ester	757-58-4
P020	Phenol, 2-(1-methylpropyl)-4, 6-dinitro-	88-85-7	P113	Thallic oxide	1314-32-5
P009	Phenol, 2,4,6-trinitro-, ammonium salt (R)	131-74-8	P113	Thallium [(III)] oxide I_2O_3	1314-32-5
P092	Phenylmercury acetate	62-38-4	P114	Thallium (I) selenite	12039-52-0
P093	Phenylthiourea	103-85-5	P115	Thallium (I) sulfate	7446-18-6
P094	Phorate	298-02-2			[10031-59-1]
P095	Phosgene	75-44-5	P109	Thiodiphosphoric acid, tetra-ethyl ester	3689-24-5
P096	Phosphine	7803-51-2	P045	Thiofanox	39196-18-4
P041	Phosphoric acid, diethyl 4-nitrophenyl ester	311-45-5	P049	Thioimidodicarbonic diamide $((\text{H}_2\text{N})\text{C}(\text{S}))_2\text{NH}$	541-53-7
P039	Phosphorodithioic acid, 0,0-diethyl S-(2-(ethylthio)ethyl) ester	298-04-4	P014	Thiophenol	108-98-5
P094	Phosphorodithioic acid, 0,0-diethyl S-((ethylthio)methyl) ester	298-02-2	P116	Thiosemicarbazide	79-19-6
P044	Phosphorodithioic acid, 0,0-dimethyl S-(2(methylamino)-2-oxoethyl) ester	60-51-5	P026	Thiourea, (2-chlorophenyl)-	5344-82-1
P043	Phosphorofluoric acid, bis (1-methylethyl) ester	55-91-4	P072	Thiourea, 1-naphthalenyl-	86-88-4
P089	Phosphorothioic acid, 0, 0-diethyl 0-(4[p]-nitrophenyl) ester	56-38-2	P093	Thiourea, phenyl-	103-85-5
P040	Phosphorothioic acid, 0, 0-diethyl 0-pyrazinyl ester	297-97-2	P123	Toxaphene	8001-35-2
P097	Phosphorothioic acid, 0-(4-((dimethylamino) sulfonyl) phenyl) 0,0-dimethyl ester	52-85-7	P118	Trichloromethanethiol	75-70-7
P071	Phosphorothioic acid, 0,0-dimethyl 0-(4-nitrophenyl) ester	298-00-0	P119	Vanadic acid, ammonium salt	7803-55-6
P110	Plumbane, tetraethyl-	78-00-2	P120	Vanadium [(V)] oxide V_2O_5	1314-62-1
P098	Potassium cyanide	151-50-8	P120	Vanadium pentoxide	1314-62-1
P098	Potassium cyanide $\text{K}(\text{CN})$	151-50-8	P084	Vinylamine, N-methyl-N-nitroso-	4549-40-0
P099	Potassium silver cyanide	506-61-6	P001	Warfarin, and salts when present at concentrations greater than 0.3% [or in unknown concentrations]	81-81-2
P070	Propanal, 2-methyl-2-(methylthio)-,0-((methylamino)carbonyl)oxime	116-06-3	P121	Zinc cyanide	557-21-1
P101	Propanenitrile	107-12-0	P121	Zinc cyanide $\text{Zn}(\text{CN})_2$	557-21-1
P027	Propanenitrile, 3-chloro-	542-76-7	P122	Zinc phosphide Zn_3P_2 [(R,T)], when present at concentrations greater than 10% (R,T) 'CAS number given for parent compound only [or in unknown concentrations]	1314-84-7
P069	Propanenitrile, 2-hydroxy-2-methyl-	75-86-5			
P081	1,2,3-Propanetriol, trinitrate-(R)	55-63-0			
P017	2-Propanone, 1-bromo-	598-31-2			
P102	Propargyl alcohol	107-19-7			
P003	2-Propenal	107-02-8			
P005	2-Propen-1-ol	107-18-6			
P067	1,2-Propylenimine	75-55-8			
P102	2-Propyn-1-ol	107-19-7			
		[591-08-2]			

(6) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in subsections (1) through (4) of this section, are identified as toxic wastes (T), unless otherwise designated and are subject to the limited quantity generator exclusion defined in Section 5(1), (6), and (7) of 401 KAR 31:010.

(NOTE: The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only

listed for toxicity.) These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance	Chemical Abstracts No.			
U001	Acetaldehyde (I)	75-07-0	U088	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2
U034	Acetaldehyde, trichloro-	75-87-6	U102	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3
U187	Acetamide, N-(4-ethoxyphenyl)-	62-44-2	U107	1,2-Benzenedicarboxylic acid, di[-n]octyl ester	117-84-0
U005	Acetamide, N-9H-fluoren-2-yl-	53-96-3	U070	Benzene, 1,2-dichloro-	95-50-1
U240	<u>Acetic acid, (2,4-dichloro-phenoxy)-, salts and esters</u>	<u>94-75-7</u>	U071	Benzene, 1,3-dichloro-	541-73-1
U112	Acetic acid ethyl ester (I)	141-78-6	U072	Benzene, 1,4-dichloro-	106-46-7
U144	Acetic acid, lead (2+) salt	301-04-2	U060	Benzene, 1,1'-(2,2-dichloro-ethylidene)bis(4-chloro-	72-54-8
U214	Acetic acid, thallium (1+) salt	563-68-8	U017	Benzene, (dichloromethyl)-	98-87-3
<u>See F027</u>			U223	Benzene, 1,3-diisocyanato-	26471-62-5
[U232]	Acetic acid, (2,4,5-trichloro-phenoxy)-	93-76-5	U239	Benzene, dimethyl- (I,T)	1330-20-7
U002	Acetone (I)	67-64-1	U201	1,3-Benzenediol	106-46-3
U003	Acetonitrile (I,T)	75-05-8	U127	Benzene, hexachloro-	118-74-1
U004	Acetophenone	98-86-2	U056	Benzene, hexahydro (I)-	110-82-7
U005	2-Acetylaminofluorene	53-96-3	U220	Benzene, methyl-	108-88-3
U006	Acetyl chloride (C,R,T)	75-36-5	U105	Benzene, 1-methyl-2, 4-dinitro-	121-14-2
U007	Acrylamide	79-06-1	U106	Benzene, 2-methyl-1,3-dinitro-	606-20-2
U008	Acrylic acid (I)	79-10-7	U055	Benzene, (1-methylethyl), (I)	98-82-8
U009	Acrylonitrile	107-13-1	U169	Benzene, nitro- [(I,T)]	98-95-3
U011	Amitrole	61-82-5	U183	Benzene, pentachloro-	608-93-5
U012	Aniline (I,T)	62-53-3	U185	Benzene, pentachloronitro-	82-68-8
U136	<u>Arsinic acid, dimethyl-</u>	<u>75-60-5</u>	U020	Benzenesulfonic acid chloride (C,R)	98-09-9
U014	Auramine	492-80-8	U020	Benzenesulfonyl chloride (C,R)	98-09-9
U015	Azaserine	115-02-6	U207	Benzene, 1,2,4,5-tetrachloro-	95-94-3
U010	Azirino (2',3':3,4) pyrrolo (1,2-a) indole-4, 7-dione, 6-amino-8-(((aminocarbonyl)oxy) methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, (1aS- (1aalpha, 8beta, 8aalpha, 8balph))-	50-07-7	U061	Benzene), 1,1'-(2,2,2-tri-chloroethylidene)bis(4-chloro-	50-29-3
U157	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-	56[0]-49-5	U247	Benzene, 1,1'-(2,2,2-tri-chloroethylidene)bis(4-methoxy-	72-43-5
U016	[3,4-]Benz(c)acridine	225-51-4	U023	Benzene, (trichloromethyl)- [(C,R,T)]	98-07-7
U017	Benzal chloride	98-87-3	U234	Benzene, 1,3,5-trinitro- [(R,T)]	99-35-4
U192	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propenyl)-	23950-58-5	U021	Benzidine	92-87-5
U018	[1,2-]Benz(a)anthracene	56-55-3	[U202]	1,2-Benzisothiazilin-3-one, 1,1-dioxide, and salts	81-07-2
U094	Benz(a)anthracene, 7,12-dimethyl-	57-97-6	U202	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide and salts	81-07-02
U012	Benzenamine (I,T)	62-53-3	U203	1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7
U014	Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	492-80-8	U141	1,3-Benzodioxole, 5-(1-propenyl)-	120-58-1
U049	Benzenamine, 4-chloro-2-methyl-, <u>hydrochloride</u>	3165-93-3	U090	1,3-Benzodioxole, 5-propyl-	94-58-6
U093	Benzenamine, N, N-dimethyl-4-(phenylazo-)	60-11-7	U064	Benzo(rst)pentaphene	189-55-9
U328	Benzenamine, 2-methyl-	95-53-4	U248	<u>2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenol-butyl)-, and salts, when present at concentrations of 0.3% or less</u>	<u>81-81-2</u>
U353	Benzenamine, 4-methyl-	106-49-0	U022	Benzo(a)pyrene	50-32-8
U158	Benzenamine, 4,4'-methylenebis (2-chloro-	101-14-4	U197	p-Benzoquinone	106-51-4
U222	Benzenamine, 2-methyl-, hydrochloride	636-21-5	U023	Benzotrichloride (C,R,T)	98-07-7
U181	Benzenamine, 2-methyl-5-nitro	99-55-8	U085	2,2'-Bioxirane [(I,T)]	1464-53-5
U019	Benzene (I,T)	71-43-2	U021	(1,1-Biphenyl)-4,4'-diamine	92-87-5
U038	Benzenecetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy, ethyl ester	510-15-6	U073	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-	91-94-1
U030	Benzene, 1-bromo-4-phenoxy-	101-55-3	U091	(1,1'-Biphenyl)-4,4'-diamine, 3,3',dimethoxy-	119-90-4
U035	Benzenebutanoic acid, 4-(bis (2-chloroethyl)amino)-	305-03-3	U095	(1,1'-Biphenyl)-4,4'-diamine, 3,3',dimethyl-	119-93-7
U037	Benzene, chloro-	108-90-7	[U027]	Bis(2-chloroisopropyl) ether	39638-32-9
U221	Benzenediamine, ar-methyl-	25376-45-8	U024	Bis(2-chloromethoxy) ethane	111-91-1
U028	1,2-Benzenedicarboxylic acid, bis(2-ethylhexy) ester	117-81-7	U028	Bis(2-ethylhexyl) phthalate	117-81-7]
U069	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2	U225	Bromoform	75-25-2
			U030	4-Bromophenyl phenyl ether	101-55-3
			U128	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3
			U172	1-Butanamine, N.-butyl-N-nitroso	924-16-3

[U035	Butanoic acid, 4-(Bis(2-chloroethyl)amino benzene-]	305-03-3	U069	Dibutyl phthalate	84-74-2
U031	1-Butanol (I)	71-36-3	U070	o-Dichlorobenzene	95-50-1
U159	2-Butanone (I,T)	78-93-3	U071	m-Dichlorobenzene	541-73-1
U160	2-Butanone peroxide (R,T)	1338-23-4	U072	p-Dichlorobenzene	106-46-7
U053	2-Butenal	4170-30-3	U073	3,3'-Dichlorobenzidine	91-94-1
U074	2-Butene, 1,4-dichloro- (I,T)	764-41-0	U074	1,4-Dichloro-2-butene (I,T)	764-41-0
U143	2-Butenoic acid, 2-methyl-, 7-((2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl)-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, (1S-(1alpha(Z),7(2S,3R),7aalpha))-	303-34-4	U075	Dichlorodifluoromethane	75-71-8
U031	n-Butyl alcohol (I)	71-36-3	U078	1,1-Dichloroethylene	75-35-4
U136	Cacodylic acid	75-60-5	U079	1,2-Dichloroethylene	156-60-5
U032	Calcium chromate	13765-19-0	U025	Dichloroethyl ether	111-44-4
U238	Carbamic acid, ethyl ester	51-79-6	U027	<u>Dichloroisopropyl ether</u>	<u>108-60-1</u>
U178	Carbamic acid, methylnitroso-, ethyl ester	615-53-2	U024	<u>Dichloromethoxy ethane</u>	<u>111-91-1</u>
U097	Carbamic chloride, dimethyl-	79-44-7	U081	2,4-Dichlorophenol	120-83-2
U114	Carbamodithioic acid, 1,2-ethanediyibis-, salts and esters	111-54-6	U082	2,6-Dichlorophenol	87-65-0
U062	Carbamothioic acid, bis(1-methylethyl)-S-(2,3-dichloro-2-propenyl) ester	2303-16-4	[U240	2,4-Dichlorophenoxyacetic acid, salts and esters	94-75-7
U215	Carbonic acid, dithallium (1+) salt	6533-73-9	U083	1,2-Dichloropropane	78-87-5]
U033	Carbonic difluoride	353-50-4	U084	1,3-Dichloropropene	542-75-6
U156	Carbonochloridic acid, methyl ester (I,T)	79-22-1	U085	1,2:3,4-Diepoxybutane (I,T)	1464-53-5
U033	Carbon oxyfluoride (R,T)	353-50-4	U108	1,4-Diethyleneoxide	123-91-1
U211	Carbon tetrachloride	56-23-5	U028	<u>Diethylhexyl phthalate</u>	<u>117-81-7</u>
U034	Chloral	75-87-6	U086	N, N-Diethylhydrazine	1615-80-1
U035	Chlorambucil	305-03-3	U087	0, 0-Diethyl-S-methyldithio-phosphate	3288-58-2
U036	<u>Chlordane, alpha and gamma isomers</u>	<u>57-74-9</u> [12789-03-6]	U088	Diethyl phthalate	84-66-2
U026	Chlornaphazine	494-03-1	U089	Diethylstilbesterol	56-53-1
U037	Chlorobenzene	108-90-7	U090	Dihydrosafrole	94-58-6
U038	<u>Chlorobenzilate</u>	<u>510-15-6</u>	U091	3,3'-Dimethoxybenzidine	119-90-4
U039	p-Chloro-m-cresol	59-50-7	U092	Dimethylamine (I)	124-40-3
[U041	1-Chloro-2,3-epoxypropane	106-89-8]	U093	p-Dimethylaminoazobenzene	60-11-7
U042	2-Chlorethyl vinyl ether	110-75-8	U094	7,12-Dimethylbenz(a)anthracene	57-97-6
U044	Chloroform	67-66-3	U095	3,3'-Dimethylbenzidine	119-93-7
U046	Chloromethyl methyl ether	107-30-2	U096	alpha, alpha-Dimethylbenzyl-hydroperoxide (R)	80-15-9
U047	beta-Chloronaphthalene	91-58-7	U097	Dimethylcarbamoyl chloride	79-44-7
U048	o-Chlorophenol	95-57-8	U098	1,1-Dimethylhydrazine	57-14-7
U049	4-Chloro-o-toluidine, hydrochloride	3165-93-3	U099	1,2-Dimethylhydrazine	540-73-8
U032	Chromic acid <u>H₂CrO₄</u> , calcium salt	13765-19-0	U101	2,4-Dimethylphenol	105-67-9
U050	Chrysene	218-01-9	U102	Dimethyl phthalate	131-11-3
U051	Creosote	[8021-39-4]	U103	Dimethyl sulfate	77-78-1
U052	Cresols (Cresylic acid)	1319-77-3	U105	2,4-Dinitrotoluene	121-14-2
U053	Crotonaldehyde	4170-30-3	U106	2,6-Dinitrotoluene	606-20-2
U055	Cumene (I)	98-82-8	U107	Di-n-octyl phthalate	117-84-0
U246	Cyanogen bromide (CN) Br	506-68-3	U108	1,4-Dioxane	123-91-1
U197	2,5-Cyclohexadiene-1,4-dione	106-51-4	U109	1,2-Diphenylhydrazine	122-66-7
U056	Cyclohexane (I)	110-82-7	U110	Dipropylamine (I)	142-84-7
U129	<u>Cyclohexane 1,2,3,4,5,6,-hexachloro-(1alpha, 2alpha, 3beta, 4alpha, 5alpha, 6beta)-</u>	<u>58-89-9</u>	U111	Di-n-propylnitrosamine	621-64-7
U057	Cyclohexanone (I)	108-94-1	U041	<u>Epichlorohydrin</u>	<u>106-89-8</u>
U130	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4	U001	Ethanal (I)	75-07-0
U058	Cyclophosphamide	50-18-0	U174	Ethanamine, N-ethyl-N-nitroso-	55-18-5
U240	2,4-D, salts and esters	194-75-7	U155	1,2-Ethanediamine, N,N-di-methyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91-80-5
U059	Daunomycin	20830-81-3	U067	Ethane, 1,2-dibromo-	106-93-4
U060	DDD	72-54-8	U076	Ethane, 1,1-dichloro-	75-34-3
U061	DDT	50-29-3	U077	Ethane, 1,2-dichloro-	107-06-2
U062	Diallate	2303-16-4	U131	Ethane, hexachloro-	67-72-1
U063	Dibenz(a,h) anthracene	53-70-3	U024	Ethane, 1,1'-(methylenebis (oxy))bis(2-chloro-)	111-91-1
U064	Dibenzo(a,i) pyrene	189-55-9	U117	Ethane, 1,1'-oxybis- (I)	60-29-7
U066	1,2-Dibromo-3-chloropropane	96-12-8	U025	Ethane, 1,1'-oxybis(2-chloro-)	111-44-4
			U184	Ethane, pentachloro-	76-01-7
			U208	Ethane, 1,1,1,2-tetrachloro-	630-20-6
			U209	Ethane, 1,1,2,2-tetrachloro-	79-34-5
			U218	Ethanethioamide	62-55-5
			U226	<u>Ethane, 1,1,1,-trichloro</u>	<u>71-55-6</u>
			U227	Ethane, 1,1,2-trichloro-	79-00-5
			U359	Ethanol, 2-ethoxy-	110-80-5
			U173	Ethanol, 2,2'-(nitrosoimino) bis-	1116-54-7
			U004	Ethanone, 1-phenyl	98-86-2
			U043	Ethene, chloro-	75-01-4
			U042	Ethene, (2-chlorethoxy)-	110-75-8
			U078	Ethene, 1,1-dichloro	75-35-4
			U079	Ethene, 1,2-dichloro- (E)	156-60-5

U210	Ethene, tetrachloro	127-18-4	U152	Methacrylonitrile (I,T)	126-98-7
U228	Ethene, trichloro	79-01-6	U092	Methanamine, N-methyl- (I)	124-40-3
U112	Ethyl acetate (I)	141-78-6	U029	Methane, bromo-	74-83-9
U113	Ethyl acrylate (I)	140-88-5	U045	Methane, chloro- (I,T)	74-87-3
U238	Ethyl carbamate (<u>urethane</u>)	51-79-6	U046	Methane, chloromethoxy-	107-30-2
[U038]	Ethyl 4,4'-dichlorobenzilate	510-15-6]	U068	Methane, dibromo-	74-95-3
U114	Ethylenebis dithiocarbamic acid, salts and esters	111-54-6	U080	Methane, dichloro-	75-09-2
U067	Ethylene dibromide	106-93-4	U075	Methane, dichlorodifluoro-	75-71-8
U077	Ethylene dichloride	107-06-2	U138	Methane, iodo-	74-88-4
U359	Ethylene glycol monoethyl ether	110-80-5	U119	Methanesulfonic acid, ethyl ester	62-50-0
U115	Ethylene oxide (<u>1,1</u>)	75-21-8	U211	Methane, tetrachloro-	56-23-5
U116	Ethylene thiourea	96-45-7	U153	Methanethiol (I,T)	74-93-1
U117	Ethyl ether (I)	60-29-7	U225	Methane, tribromo-	75-25-2
U076	Ethylidene dichloride	75-34-3	U044	Methane, trichloro-	67-66-3
U118	Ethylmethacrylate	97-63-2	U121	Methane, trichlorofluoro-	75-69-4
U119	Ethyl methanesulfonate	62-50-0	<u>U036</u>	<u>4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a,-hexahydro-</u>	<u>57-74-9</u>
U120	Fluoranthene	206-44-0			
U122	Formaldehyde	50-00-0	[U123]	Methanoic acid (C,T)	64-18-6]
U123	Formic acid (C,T)	64-18-6	U154	Methanol (I)	67-56-1
U124	Furan (I)	110-00-9	U155	Methapyrilene	91-80-5
U125	2-Furancarboxaldehyde (I)	98-01-1	U142	1,3,4-Metheno-2H,cyclobuta (cd)pentalen-2-one, 1,1a,3,3a,4,5,5a,5b,6-decachloro-octahydro-	143-50-0
U147	2,5-Furandione	108-31-6			
U213	Furan, tetrahydro- (I)	109-99-9	U247	Methoxychlor	72-43-5
U125	Furfural (I)	98-01-1	U154	Methyl alcohol (I)	67-56-1
U124	Furfuran (I)	110-00-9	U029	Methyl bromide	74-83-9
U206	D-Glucopyranose, 2-deoxy-2(3-methyl-3-nitrosoareido)-	18883-66-4	U186	1-Methylbutadiene (I)	504-60-9
<u>U206</u>	<u>D-Glucose, 2-deoxy-2-(((methylnitrosoamino)carbonyl(amino)-</u>	<u>18883-66-4</u>	U045	Methyl chloride (I,T)	74-87-3
U126	Glycidylaldehyde	765-34-4	U156	Methyl chlorocarbonate (I,T)	79-22-1
U163	Guanidine, N-nitroso-N-methyl-N'-nitro-	70-25-7	U226	Methylchloroform	71-55-6
U127	Hexachlorobenzene	118-74-1	U157	3-Methylcholanthrene	56-49-5
U128	Hexachlorobutadiene	87-68-3	U158	4,4'-Methylenebis (2-chloro-aniline)	101-14-4
[U129]	Hexachlorocyclohexane (gamma isomer)]	58-88-9	U068	Methylene bromide	74-95-3
U130	Hexachlorocyclopentadiene	77-47-4	U080	Methylene chloride	75-09-2
U131	Hexachloroethane	67-72-1	U159	Methyl ethyl ketone (MEK) (I,T)	78-93-3
U132	Hexachlorophene	70-30-4	U160	Methyl ethyl ketone peroxide (R,T)	1338-23-4
U243	Hexachloropropene	1888-71-7	U138	Methyl iodide	74-88-4
U133	Hydrazine (R,T)	302-01-2	U161	Methyl isobutyl ketone (I)	108-10-1
U086	Hydrazine,1,2-diethyl	1615-80-1	U162	Methyl methacrylate (I,T)	80-62-6
U098	Hydrazine,1,1-dimethyl-	57-14-7	[U163]	N-Methyl-N'-nitro-N-nitrosoguanidine]	70-25-7
U099	Hydrazine,1,2-dimethyl	540-73-8			
U109	Hydrazine,1,2-diphenyl	122-66-7	U161	4-Methyl-2-pentanone (I)	108-10-1
U134	Hydrofluoric acid (C,T)	7664-39-3	U164	Methylthiouracil	56-04-2
U134	Hydrogen fluoride (C,T)	7664-39-3	U010	Mitomycin C	50-07-7
U135	Hydrogen sulfide	7783-06-4	U059	5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-((3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxyl)-7,8,9,10,tetrahydro-6,8,11-trihydroxy-1-methoxy-1-Naphthalenamine	20830-81-3
<u>U135</u>	<u>Hydrogen sulfide H₂S</u>	<u>7783-06-4</u>			
U096	Hydroperoxide, 1-methyl-1-phenylethyl (R)	80-15-9	U167	2-Naphthalenamine	134-32-7
[U136]	Hydroxydimethylarsine oxide	75-60-5]	U168	Naphthalenamine,N,N'-bis (2-chloroethyl)-	91-59-8
U116	2-Imidazolidinethione	96-45-7	<u>U026</u>	<u>Naphthalenamine,N,N'-bis (2-chloroethyl)-</u>	<u>494-03-1</u>
U137	Indeno(1,2,3cd) pyrene	193-39-5	U165	Naphthalene	91-20-3
U139	Iron dextran	9004-66-4	U047	Naphthalene, 2-chloro-	91-58-7
U190	1,3-Isobenzofurandione	85-44-9	U166	1,4-Naphthalenedione	130-15-4
U140	Isobutyl alcohol (I,T)	78-83-1	U236	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethyl-(1,1'-biphenyl)-4,4'diyl)) bis(azo)bis(5)-amino-4-hydroxy),-tetrasodium salt	72-57-1
U141	Isosafrole	120-58-1			
U142	Kepone	143-50-0	U166	1,4-Naphthoquinone	130-15-4
U143	Lasiocarpine	303-34-4	U167	alpha-Naphthylamine	134-32-7
U144	Lead acetate	301-04-2	U168	beta-Naphthylamine	91-59-8
U146	Lead, bis(acetato-0-)tetrahydroxytri-	1335-32-6	[U026]	2-Naphthylamine,N,N-bis(2-chloroethyl)-	494-03-1
U145	Lead phosphate	7446-27-7	U167	1-Naphthylamine	134-32-7
U146	Lead subacetate	1335-32-6	U168	2-Naphthylamine	91-59-8]
U129	Lindane	58-89-9			
<u>U163</u>	<u>MNNG</u>	<u>70-25-7</u>			
U147	Maleic anhydride	108-31-6			
U148	Maleic hydrazide	123-33-1			
U149	Malononitrile	109-77-3			
U150	Melphalan	148-82-3			
U151	Mercury	7439-97-6			

U217	Nitric acid, thallium(I+) salt	10102-45-1	U193	1,3-Propane sultone	1120-71-4
U169	Nitrobenzene (I,T)	98-95-3	See F027		
U170	p-Nitrobenzene	100-02-7		Propanoic acid, 2-(2,4,5- trichlorophenoxy)-	93-72-1
U171	2-Nitropropane (I,T)	79-46-9	U235	1-Propanol, 2,3-dibromo-, phosphate (3:1)	126-72-7
U172	N-Nitrosodi-n-butylamine	924-16-3	U140	1-Propanol, 2-methyl- (I,T)	78-83-1
U173	N-Nitrosodiethanolamine	1116-54-7	U002	2-Propanone (I)	67-64-1
U174	N-Nitrosodiethylamine	55-18-5	[U084	1-Propane, 1,3-dichloro-	542-75-6
[U111	N-Nitrosodi-n-propylamine	621-64-7]	U152	2-Propanenitrile, 2-methyl- (I,T)]	126-98-7
U176	N-Nitroso-N-ethylurea	759-73-9	U007	2-Propenamide	79-06-1
U177	N-Nitroso-N-methylurea	684-93-5	U084	1-Propene, 1,3-dichloro-	542-75-6
U178	N-Nitroso-N-methylurethane	615-53-2	U243	1-Propene, 1,1,2,3,3,3- hexachloro	1888-71-7
U179	N-Nitrosopiperidine	100-75-4	U009	2-Propenenitrile	107-13-1
U180	N-Nitrosopyrrolidine	930-55-2	U152	2-Propenenitrile, 2-methyl- (I,T)	126-98-7
U181	5-Nitro-o-toluidine	99-55-8	U008	2-Propenoic acid (I)	79-10-7
U193	1,2-Oxathiolane, 2,2-dioxide	1120-71-4	U113	2-Propenoic acid, ethyl ester (I)	140-88-5
U058	2H-1,3,2-Oxazaphosphorine-2- amine, N,N-bis(2-chloroethyl) tetrahydro-, 2-oxide	50-18-0	U118	2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2
[U058	2H-1,3,2-Oxazaphosphorine, 2- (bis(2-chloroethyl)amino)- tetrahydro-, 2-oxide]	50-18-0	U162	2-Propenoic acid, 2-methyl, methyl ester (I,T)	80-62-6[6-2]
U115	Oxirane (I,T)	75-21-8	[U233	Propionic acid, 2-(2,4,5-, trichlorophenoxy)-]	93-72-1
U126	Oxiranecarboxaldehyde	765-34-4	U194	n-Propylamine (I,T)	107-10-8
U041	Oxirane, (chloromethyl)-	106-89-8	U083	Propylene dichloride	78-87-5
U182	Paraldehyde	123-63-7	U148	3,6-Pyridazinedione, 1,2- dihydro-	123-33-1
U183	Pentachlorobenzene	608-93-5	U196	Pyridine	110-86-1
U184	Pentachloroethane	76-01-7	[U155	Pyridine, 2-((2-dimethyl- amino)ethyl)-2-phenyl- amino-]	91-80-5
U185	Pentachloronitrobenzene	82-68-8	U191	Pyridine, 2-methyl	109-06-8
See F027			U237	2,4(1H,3H)-Pyrimidinedione, 5- (bis(2-chloroethyl)amino)-	66-75-1
[U242]	Pentachlorophenol	87-86-5	U164	4(1H)-Pyrimidinone, 2,3- dihydro-6-methyl-2-thioxo-	56-04-2
U161	Pentanol, 4-methyl-	108-10-1	U180	Pyrrolidine, 1-nitroso-	930-55-2
U186	1,3-Pentadiene (I)	504-60-9	U200	Reserpine	50-55-5
U187	Phenacetin	62-44-2	U201	Resorcinol	108-46-3
U188	Phenol	108-95-2	U202	Saccharin and salts	'81-07-2
U048	Phenol, 2-chloro-	95-57-8	U203	Safrole	94-59-7
U039	Phenol, 4-chloro-3-methyl-	59-50-7	U204	Selenious acid	7783-00-8
U081	Phenol, 2,4-dichloro-	120-83-2	U204	Selenium dioxide	7783-00-8
U082	Phenol, 2,6-dichloro-	87-65-0	U205	Selenium sulfide	7488-56-4
U089	Phenol, 4,4'-(1,2-diethyl- 1,2-ethenediyl)bis-, (E)-	56-53-1	U205	Selenium sulfide SeS_2 (R,T)	7488-56-4 [7446-34-6]
U101	Phenol, 2,4-dimethyl-	105-67-9	U015	L-Serine, diazoacetate (ester)	115-02-6
U052	Phenol, methyl-	1319-77-3	See F027		
U132	Phenol, 2,2'-methylenebis (3,4,6-trichloro-	70-30-4	[U223]	Silvex (2,4,5-,TP)	93-72-1
U170	Phenol, 4-nitro-	100-02-7	U206	Streptozotocin	18883-66-4
See F027			U103	Sulfuric acid, dimethyl ester	77-78-1
[U242]	Phenol, pentachloro-	87-86-5	U189	Sulfur phosphide (R)	1314-80-3
See F027			See F027		
[U212]	Phenol, 2,3,4,6-tetrachloro-	58-90-2	[U232]	2,4,5-T	93-76-5
See F027			U207	1,2,4,5-,Tetrachlorobenzene	95-94-3
[U230]	Phenol, 2,4,5-trichloro-	95-95[4]-4	U208	1,1,1,2-Tetrachloroethane	630-20-6
See F027			U209	1,1,2,2-Tetrachloroethane	79-34-5
[U231]	Phenol, 2,4,6-trichloro	88-06-2	U210	Tetrachloroethylene	127-18-4
U150	L-phenylalanine, 4-(bis(2- chloroethyl)amino)-	148-82-3	See F027		
[U137	1,10-(1,2-phenylene) pyrene	193-39-5]	[U212]	2,3,4,6-Tetrachlorophenol	58-90-2
U145	Phosphoric acid, lead (2+) salt (2:3)	7446-27-7	U213	Tetrahydrofuran (I)	109-99-9
U087	Phosphorodithioic acid, 0,0- diethyl-, S-methylester	3288-58-2	U214	Thallium (I) acetate	15843-14-8
U189	Phosphorus sulfide (R)	1314-80-3	U215	Thallium (I) carbonate	6533-73-9
U190	Phthalic anhydride	85-44-9	U216	Thallium (I) chloride	7791-12-0
U191	2-Picoline	109-06-8	U216	Thallium chloride $TlCl$	7791-12-0
U179	Piperidine, 1-nitroso-	100-75-4	U217	Thallium (I) nitrate	10102-45-1
U192	Pronamide	23950-58-5	U218	Thioacetamide	62-55-5
U194	1-Propanamine, (I,T)	107-10-8	U153	Thiomethanol (I,T)	74-93-1
U111	1-Propanamine, N-nitroso-N- propyl-	621-64-7	U244	Thioperoxydicarbonic diamide ($(H_2N)C(S)_2S_2$, tetramethyl-	137-26-8
U110	1-Propanamine, N-propyl- (I)	142-84-7	U219	Thiourea	62-56-6
U066	Propane, 1,2-dibromo-3-chloro-	96-12-8			
U083	Propane, 1,2-dichloro-	78-87-5			
U149	Propanedinitrile	109-77-3			
U171	Propane, 2-nitro- (I,T)	79-46-9			
U027	Propane, 2,2'-oxybis (2-chloro-)	108-60-1 [39638-32-9]			

U244	Thiram	137-26-8
U220	Toluene	108-88-3
U221	Toluenediamine	25376-45-8
U223	Toluene diisocyanate (R,T)	26471-62-5
U328	o-Toluidine	95-53-4
U353	p-Toluidine	106-49-0
U222	o-Toluidine hydrochloride	636-21-5
U011	1H-1,2,4-Triazol-3-amine	61-82-5
[U232]	2,4,5-Trichloroacetic acid, salts and esters	93-76-5
U226	1,1,1-Trichloroethane	71-55-6]
U227	1,1,2-Trichloroethane	79-00-5
U228	Trichloroethylene	79-01-6
U121	Trichloromonofluoromethane	75-69-4
<u>See F027</u>		
[U230]	2,4,5-Trichlorophenol	95-95-4
<u>See F027</u>		
[U231]	2,4,6-Trichlorophenol	88-06-2
[U232]	2,4,5-Trichlorophenoxyacetic acid	
U233	2,4,5-Trichlorophenoxypropionic acid, salts and esters]	93-72-1
U234	1,3,5[sym]-Trinitrobenzene (R,T)	99-35-4
U182	1,3,5-Trioxane, 2,4,6-trimethyl-	123-63-7
U235	Tris(2,3-dibromopropyl) phosphate	126-72-7
U236	Trypan blue	72-57-1
[U237]	Uracil, 5-(bis(2-chloroethyl) amino)]	66-75-1
U237	Uracil mustard	66-75-1
U176	Urea, N-ethyl-N-nitroso-	759-73-9
U177	Urea, N-methyl-N-nitroso-	684-93-5
U043	Vinyl chloride	75-01-4
U248	Warfarin, and salts, when present at concentrations of 0.3% or less	'81-81-2
U239	Xylene (I)	1330-20-7
U200	Yohimban-16-carboxylic acid, 11, 17-dimethoxy-18((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester, (3beta,16beta,17alpha,18beta,20alpha)-	50-55-5
U249	Zinc phosphide Zn_3P_2 , when present at concentrations of 10% or less	1314-84-7
<u>'CAS number given for parent compound only.</u>		

Section 5. Nerve and Blister Agents. The following substances are listed as hazardous wastes:

<u>Kentucky Waste Number</u>	<u>Substance</u>	<u>Chemical Abstracts Number</u>
N001	GB (isopropyl methyl phosphonofluoridate) (H)	107-44-8
N002	VX (O-ethyl-S-(2-diisopropyl-aminoethyl)-methyl phosphonothiolate) (H)	50782-69-9
N003	H (bis(2-chloroethyl) sulfide) and related compounds (H)	505-60-2

FRANK DICKERSON, Commissioner

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: October 11, 1989

FILED WITH LRC: October 12, 1989 at 9 a.m.

NATURAL RESOURCES & ENVIRONMENTAL
PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 34:350. Treatment[, storage and disposal] of nerve and blister agents.

RELATES TO: KRS 224.033, 224.060, 224.071, 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: KRS 224.210, 224.033, 224.865, 224.866, 224.867

NECESSITY AND FUNCTION: KRS 224.866 requires any person who treats, stores, recycles or disposes of hazardous wastes to first obtain a hazardous waste site or facility permit from the cabinet. KRS 224.865 establishes criteria which the cabinet shall consider in making a determination to issue, deny or condition a permit for a hazardous waste site or facility for treatment, storage or disposal of nerve agents. This regulation establishes the criteria which shall be met before a decision is made on a permit application for a hazardous waste site or facility for treatment[, storage or disposal] of nerve and blister agents.

Section 1. Applicability. This regulation applies to owners or operators of facilities that treat[, store, or dispose of] any of the hazardous wastes listed in Section 5 of 401 KAR 31:040.

Section 2. Permit Criteria. (1) In addition to the requirements in 401 KAR Chapters 30 through 34, and 36 through 40 the cabinet shall consider the criteria set forth in subsection (2) of this section in making a determination to issue, deny, or condition a permit for any person applying for a permit to construct or operate a hazardous waste site or facility for treatment, storage or disposal of any of the hazardous wastes listed in Section 5 of 401 KAR 31:040.

(2) The permit applicant shall affirmatively demonstrate and the cabinet shall determine prior to issuance, conditional issuance or denial of the permit that:

(a) The proposed treatment or destruction technology has been proven in an operational facility of scale, configuration and through-put comparable to the proposed facility, for a period of time sufficient [five (5) years] to provide assurance of 99.9999 percent destruction or neutralization of each substance proposed to be treated or destroyed. Destruction efficiency is determined for each waste from the following equation:

$$DE\% = \frac{(W_{in} - W_{out} - W_{res}) \times 100\%}{W_{in}}$$

Where:

W_{in} = Mass feed rate of waste to the incinerator.

W_{out} = Mass emission rate of the same waste present in exhaust emissions prior to release to the atmosphere.

W_{res} = Mass removal rate of waste via the incinerator residues.

(b) Monitoring data from a comparable facility reflects the absence of emissions from stack or fugitive sources, including but not limited to

the products of combustion and incomplete combustion, which alone or in combination present an adverse effect on human health or the environment as specified in KRS 224.865(2)(b). The cabinet shall determine from the monitoring data the absence of risk to human health and the environment prior to permit issuance. [environmental effect or an incidence of one (1) of the following illness per million people in the affected area: cancer, organophosphate induced delayed neuropathy, electroencephalographic or other functional changes following exposure to organophosphates, occurrence of mutagenic or teratogenic disorders, or diseases that follow acute symptomatic intoxication per year during a study period of five (5) years. The affected area shall be determined by a dispersion model approved by the cabinet.]

(c) Provisions have been made for development and funding of sufficient training, coordination and equipment for state and local emergency response personnel, including the health, police, fire and emergency response fields, to assure the ability of the community to respond to releases from such a facility, including development and funding of an evacuation plan by the applicant which demonstrates the capability of removing individuals from the largest area at risk from a worst-case release.

[(d) Maximum allowable stack concentrations and maximum allowable ambient air concentrations are met as illustrated in Table 1 and 2 of this paragraph. Maximum stack concentrations shall be evaluated by air dispersion modeling of worst-case-credible-events and conditions specific to each site to ensure that the control limits for the general population and work place would not be exceeded as a consequence of release at or below the allowable stack concentrations.]

TABLE 1
Maximum Allowable Ambient Air Concentrations
(mg/m³) for Nerve Agents¹

Agent	General Population	Workers
GB	0.000003 (3x10 ⁻⁶)	0.0001 (1x10 ⁻⁴)
VX	0.000003 (3x10 ⁻⁶)	0.00001 (1x10 ⁻⁵)
H ²	0.0001 (1x10 ⁻⁴)	0.003 (3x10 ⁻³)
Averaging Time	72 Hours	8 hours

¹Protection against exposure to agents in aerosol and liquid form shall be sufficient to prevent direct contact with the skin and eyes.

²Data supporting the ability to monitor for H at 0.0001 mg/m³ at all sites shall be developed.]

TABLE 2
Maximum Allowable Stack Concentrations
(mg/m³) for Nerve Agents

Agent	Maximum Allowable Stack Concentrations
GB	0.0003 (3x10 ⁻⁴)
VX	0.0003 (3x10 ⁻⁴)
H	0.03 (3x10 ⁻²)

(d) [(e)] All workers within 1000 meters of the incinerator unit are provided with an adequate level of protection against exposure to the nerve agents.

Section 3. Performance Standards. In addition to the performance standards specified in 401 KAR 34:240, an incinerator burning the nerve and blister agents specified in Section 5 of 401 KAR 31:040 shall be designed, constructed, and maintained to achieve a 99.9999 percent destruction or neutralization of each substance treated or destroyed.

FRANK DICKERSON, Commissioner

CARL H. BRADLEY, Secretary

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NATURAL RESOURCES & ENVIRONMENTAL
PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 38:190. Specific Part B requirements for incinerators.

RELATES TO: KRS 224.033, 224.036, 224.071, 224.087, 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: KRS 13A.210, 224.033, 224.866

NECESSITY AND FUNCTION: KRS 224.842 and 224.866 require any person who treats, stores, recycles, or disposes of hazardous waste to first obtain a hazardous waste site or facility permit from the cabinet. This chapter establishes the permitting process for hazardous waste sites or facilities. An overview of the permit program is found in the Necessity and Function of 401 KAR 38:010. This regulation establishes specific Part B requirements for facilities that incinerate hazardous waste.

Section 1. Applicability. The requirements in this regulation apply to all owners and operators of hazardous waste sites or facilities that incinerate or will incinerate hazardous waste.

Section 2. Additional Part B Requirements for Incinerators. In addition to the information required by 401 KAR 38:080, 38:090 and 38:100, owners and operators of facilities that incinerate or will incinerate hazardous waste, except as Section 1 of 401 KAR 34:010 and Section 1 of 401 KAR 34:240, provide otherwise, must fulfill the requirements of subsection (1), (2) or (3) of this section.

(1) When seeking an exemption under Section 1(2) or (3) of 401 KAR 34:240 (ignitable, corrosive or reactive wastes only) submit:

(a) Documentation that the waste is listed as a hazardous waste in Chapter 31 solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or

(b) Documentation that the waste is listed as a hazardous waste in Chapter 31 solely because it is reactive (Hazard Code R) for characteristics other than those listed in Section 4(1)(d) and (e) of 401 KAR 31:030, and will not be burned when other hazardous wastes are present in the combustion zone; or

(c) Documentation that the waste is a

hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under 401 KAR 31:030; or

(d) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in Section 4(1)(a), (b), (c), (f), (g) or (h) of 401 KAR 31:030, and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(2) Submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with Section 3 of 401 KAR 38:060; or

(3) In lieu of a trial burn, the applicant may submit the following information:

(a) An analysis of each waste or mixture of wastes to be burned including:

1. Heat value of the waste in the form and composition in which it will be burned;

2. Viscosity (if applicable), or description of physical form of the waste;

3. An identification of any hazardous organic constituents listed in 401 KAR 31:170, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in 401 KAR 31:170 which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" incorporated by reference in 401 KAR 30:010, Section 3 or their equivalent;

4. An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (incorporated by reference in Section 3 of 401 KAR 30:010);

5. A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards in Section 4 of 401 KAR 34:240.

(b) A detailed engineering description of the incinerator, including:

1. Manufacturer's name and model number of incinerator;

2. Type of incinerator;

3. Linear dimension of incinerator unit including cross-sectional area of combustion chamber;

4. Description of auxiliary fuel system (type/feed);

5. Capacity of prime mover;

6. Description of automatic waste feed cutoff system(s);

7. Stack gas monitoring and pollution control monitoring system;

8. Nozzle and burner design;

9. Construction materials;

10. Location and description of temperature, pressure, and flow indicating devices and control devices.

(c) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not

needed. The data should include those items listed in subsection (3)(a) of this section. This analysis should specify the POHC's which the applicant has identified in the waste for which a permit is sought, and any differences from the POHC's in the waste for which burn data are provided.

(d) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(e) A description of the results submitted from any previously conducted trial burn(s) including:

1. Sampling and analysis techniques used to calculate performance standards in Section 4 of 401 KAR 34:240;

2. Methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of this measurement);

(f) The expected incinerator operation information to demonstrate compliance with Sections 4 and 6 of 401 KAR 34:240 including:

1. Expected carbon monoxide (CO) level in the stack exhaust gas;

2. Waste feed rate;

3. Combustion zone temperature;

4. Indication of combustion gas velocity;

5. Expected stack gas volume, flow rate, and temperature;

6. Computed residence time for waste in the combustion zone;

7. Expected hydrochloric acid removal efficiency;

8. Expected fugitive emissions and their control procedures; and

9. Proposed waste feed cutoff limits based on the identified significant operating parameters;

(g) Such supplemental information as the cabinet finds necessary to achieve the purposes of this subsection;

(h) Waste analysis data, including that submitted in subsection (3)(a) of this section, sufficient to allow the cabinet to specify as permit Principal Organic Hazardous Constituents (permit POHC's) those constituents for which destruction and removal efficiencies will be required.

(4) The cabinet shall approve a permit application without a trial burn if it finds that:

(a) The wastes are sufficiently similar; and

(b) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify (under Section 6 of 401 KAR 34:240) operating conditions that will ensure that the performance standards in Section 4 of 401 KAR 34:240 will be met by the incinerator.

(5) The cabinet shall require facilities that incinerate any of the hazardous waste listed in Section 5 of 401 KAR 31:040 to supply [a minimum of five (5) years of] monitoring information from a comparable [similar] facility as specified in KRS 224.865(2)(a) and (b). The parameters monitored shall include those listed in Section 7 of 401 KAR 34:240 and products of complete combustion and products of incomplete combustion (PIC) from the stack and fugitive sources.

FRANK DICKERSON, Commissioner

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: October 11, 1989

FILED WITH LRC: October 12, 1989 at 9 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Surface Mining Reclamation
and Enforcement
(Amended After Hearing)

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 27 CFR 55.206, 55.218, 55.219, 55.220, 30 CFR 77.1301(c)

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.135, 350.450, 350.465

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to permits for surface coal mining and reclamation operations. This regulation provides for permits to conduct these operations. The regulation specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits and renewals, transfers, assignments, and sales of permit rights.

Section 1. Applicability. Excluding coal exploration operations, this regulation shall apply to all applications, all actions regarding permits, and all surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. No person shall engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit under this chapter for the area to be affected by the operations.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations shall file a complete and accurate application for a permanent program permit which shall comply fully with all applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, and shall not begin the operations until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit under Section 21 of this regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may, at any time, apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted under prior permanent program permits. An application for the transfer, sale, or assignment of rights granted under a permit may be submitted at any time. The actual transfer, sale, or assignment of permit rights, however, may not take place until written permission has been granted by the

cabinet.

(e) Amendment of permanent program permits. A permittee may, at any time, apply for an amendment to a permit under Section 23 of this regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. Any person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet, and the applicable requirements of KRS Chapter 350 and 405 KAR.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA; and

(b) Applicable requirements of the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.); the Fish and Wildlife Coordination Act, as amended (16 USC 661 et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 USC 703 et seq.); the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.); and the Bald Eagle Protection Act, as amended (16 USC 668a), as required by 30 CFR 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as set forth in Section 8(6) and (7) of this regulation and, if necessary, by any other measures the cabinet may deem appropriate.

Section 4. Preliminary Requirements. A person desiring a permit shall submit to the cabinet a preliminary application of the form and content prescribed by the cabinet. The preliminary application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area and adjacent areas; and the areas of land to be affected, including, but not limited to, locations of the coal seam(s) to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the cabinet. Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form and content required by the cabinet, including a copy to be filed for public inspection under Section 8(8) of this regulation.

(b) The application shall be on forms provided by the cabinet, and originals and copies of the

application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet with attachments, plans, maps, certifications, drawings, calculations or other documentation or relevant information as the cabinet may require.

(c) The application shall be complete with respect to all information required by 405 KAR and include, at a minimum: for surface mining activities, all the applicable information required under 405 KAR 8:030; for underground mining activities, all the information required under 405 KAR 8:040; and, for special types of surface coal mining and reclamation operations, all the information required under 405 KAR 8:050. No application shall be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of all technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations which collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address and position of officials of each private or academic research organization or governmental agency who provided information which has been made a part of the application regarding land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either himself or some other person who will serve as agent for service of notices and orders. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may designate persons authorized by the applicant to submit modifications to the application to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If any of the information marked on the preliminary map required under Section 4 of this regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this regulation.

(b) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be

clearly shown on the map. However, when the cabinet determines that a map scale larger than 400 feet to the inch is required to adequately show mine site details, a map of larger scale shall be provided by the applicant. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) Where a map or drawing is required to be certified by a qualified registered professional engineer, the map or drawing shall bear the seal and signature of the engineer as required by KRS Chapter 322, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with applications shall be prepared by or under the direction of a qualified registered professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS Chapter 322 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the cabinet. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit.

(2) The applicant shall submit an application fee of \$375 for each application, plus an additional \$75 for each acre or fraction thereof of the area of land to be affected by the operation. If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted. However, no acreage fees shall be required for surface areas overlying underground or auger workings which will not be affected by surface operations and facilities.

(3) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. No permit application shall be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or his authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a

permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the application is submitted to the cabinet. The applicant may elect to begin publication on or after the date the applicant receives the notification from the cabinet under Section 13(2) of this regulation that the application has been deemed administratively complete and ready for technical review. The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(b) The final consecutive weekly advertisement shall clearly state that it is the final advertisement, and that written objections to the application may be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, satisfactory to the cabinet, which may consist of an affidavit from the publishing newspaper certifying the dates, place and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified by the cabinet.

(5) The advertisement shall contain, at a minimum, the following information:

(a) The name and business address of the applicant; and

(b) A map or description which shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey seven and one-half (7 1/2) minute quadrangle map(s) which contains the area shown or described; and

4. If a map is used, show the north arrow and map scale.

(c) The location where a copy of the application is available for public inspection under subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted under Sections 9, 10, and 11 of this regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except where public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6)(a) and (b); a concise statement describing the public road, the particular part to be relocated or closed, and

the approximate timing and duration of the relocation or closing;

(f) If the application includes a request for an experimental practice under 405 KAR 7:060, a statement indicating that an experimental practice is requested and identifying the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted under Section 9 of this regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, planning agencies and sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(b) All federal and Kentucky governmental agencies which have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are a part of the permit coordination process required by Section 3 of this regulation; and

(c) Those agencies with an interest in the particular proposed operation including, but not limited to:

1. The USDA Soil Conservation Service State Conservationist;

2. The local U.S. Army Corps of Engineers district engineer;

3. The National Park Service;

4. Kentucky and federal fish and wildlife agencies; and

5. The state historic preservation officer.

(8) In accordance with Section 12 of this regulation, the cabinet shall, upon receipt of the application, make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed, and shall provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided under Section 8(6) and (7) of this regulation with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

(2) These comments or objections shall be submitted to the cabinet in the manner

prescribed by the cabinet, and shall be submitted within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections.

(1) Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified under Section 8 of this regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this regulation.

(2) The cabinet shall, immediately upon receipt of any written objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection under Section 8(8) of this regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state or local government agency or authority to be notified under Section 8 of this regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requester at the conference;

(b) State whether the requester desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant under Section 8(1) of this regulation.

(2) Except as provided in subsection (3) of this section, if a permit conference has been requested in accordance with subsection (1) of this section, the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section. The conference shall be conducted according to the following:

(a) If requested under subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining.

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference.

(c) If requested, in writing, by a conference requester in a reasonable time prior to the

conference, the cabinet may arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(d) The requirements of 405 KAR 7:090 shall not apply to the conduct of the conference. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(3) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference need not be held.

(4) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required under 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet.

(1) General availability.

(a) The cabinet shall make an application for a permit, major or minor revision, amendment, or renewal of a permit available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under subsections (2) and (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office when the changes are submitted to the Division of Permits.

(2) Information pertaining to coal seams, test borings, core samples, or soil samples in applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected.

(3) Confidentiality. The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information. Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application. Where a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:090. Confidential information shall be limited to the following:

(a) Information that pertains only to the

analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal which are potentially toxic in the environment;

(b) Information on the nature and location of archaeological resources on public land and Indian land as required under the Archaeological Resources Protection Act of 1979.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application. If the application is determined to be incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies which render the application incomplete. The applicant may submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness. If, after ten (10) working days, the cabinet determines that the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b) A determination by the cabinet that the application is administratively complete means that the application contains the major elements required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 which are necessary to allow meaningful review of the application by the cabinet. An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied. A determination that an application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods set forth in Section 16 of this regulation, the cabinet shall either:

(a) Notify the applicant of the cabinet's decision to issue or deny the application; or

(b) Notify the applicant in writing, by certified mail, return receipt requested, or by registered mail, promptly upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the

purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) If the cabinet determines from either the lists submitted as part of the application under 405 KAR 8:030, Section 3(3) or 405 KAR 8:040, Section 3(3), or from other available information, that any surface coal mining operation owned or controlled by the applicant is currently in violation of any law, rule, or regulation of the United States or any state law, rule, or regulation enacted pursuant to federal law, rule, or regulation, pertaining to air or water environmental protection, or of SMCRA or KRS Chapter 350, and regulations promulgated pursuant thereto, the cabinet shall require the applicant, before the issuance of the permit, to either:

(a) Submit to the cabinet proof which is satisfactory to the cabinet and other agencies which have jurisdiction over the violation, that the violation has been or is in the process of being corrected; or

(b) Establish to the cabinet that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. In this case, the permit shall contain a condition requiring that if the administrative or initial judicial hearing authority either denies a stay applied for in the appeal, or affirms the violation, then any surface coal mining operations being conducted under the permit shall be terminated unless and until the permittee complies with paragraph (a) of this subsection. For loss of appeal on violations of laws or regulations of the United States or states other than Kentucky, operations shall be terminated under this paragraph only when the cabinet has actual, verified notice of the loss of appeal and the subsequent failure of the permittee to correct or begin correcting the violation; and the termination shall be set aside by the cabinet only when the cabinet has actual, verified notice that the permittee has corrected the violation or is in the process of correcting the violation.

(5) No permit shall be issued if the cabinet determines that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24 of such a nature and duration and with such resulting "irreparable damage to the environment" (as defined in 405 KAR 7:020) that indicates an intent not to comply with SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24. Before any final determination by the cabinet pursuant to this subsection the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:090.

Section 14. Criteria for Application Approval or Denial. No application for a permit, revision (as applicable), or amendment of a permit shall be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information set forth in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and

accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished under the mining and reclamation plan contained in the application.

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations under 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2) or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as provided for in 405 KAR 24:040, Section 2(5).

(5)(a) The proposed operations will not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as provided for in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that the cabinet has determined that no additional protection measures are necessary.

(6) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required under 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2).

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this regulation.

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870, or has entered into a payment schedule approved by OSM.

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS

Chapter 350 of such a nature and duration and with such resulting "irreparable damage to the environment" (as defined in 405 KAR 7:020) as to indicate an intent not to comply with SMCRA or KRS Chapter 350.

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18.

(11) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use.

(12) The applicant can reasonably be expected to submit the performance bond or other equivalent guarantee required under 405 KAR Chapter 10 prior to the issuance of the permit.

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3.

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining.

(15) The cabinet has made all specific approvals required under 405 KAR Chapters 16 through 20.

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 USC 1531 et seq.).

(17) The applicant has not forfeited any bond under KRS Chapter 350. When the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land.

(18) The applicant has not had a permit revoked, suspended or terminated under KRS Chapter 350. If the applicant has had a permit revoked, suspended or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof satisfactory to the cabinet that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her.

(19) The operation will not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property.

(20) The surface coal mining operation will not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures as approved by the cabinet have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as set forth under 405 KAR 24:040.

(21) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7 or 405 KAR 18:190, Section 5, the applicant has demonstrated, to the satisfaction of the cabinet, that the site of the operation will be

a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. No application for a permit, revision, or amendment which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information set forth in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as provided for in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(a), (b), (d), and (e) of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as provided in paragraph (b) of this subsection, for a complete and accurate application submitted under Section 2(2)(c) of this regulation of a major revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application submitted under Section 2(2)(c) of this regulation for a minor revision as provided in Section 20 of this regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within fifteen (15) working days after the notice of administrative completeness under Section 13(2) of this regulation, except that periods of temporary withdrawal under Section 13(3)(b) of this regulation shall not be counted against the fifteen (15) working-day period available to the cabinet.

(b) If the notice, hearing and conference procedures mandated by KRS Chapter 350 and 405 KAR prevent a decision from being made within the time periods specified in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

- (a) The applicant;
- (b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county, and the chief executive officer of any municipality, in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The field office director of the Office of Surface Mining Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet decides to approve the application, it shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of its decision in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations when construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet under this subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this regulation; Section 3 of 405 KAR 7:060; Sections 4, 6, and 7 of 405 KAR 8:050; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a

permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall be deemed to constitute knowledge and acceptance of the conditions set forth in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter whether or not the conditions have been set forth in the permit.

(1) General.

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24; and

(b) Except to the extent that the cabinet otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the approved application; and

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted under 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit; and which are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection when the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including, but not limited to:

1. Any accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and which prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

2. Utilizing any methods specified in the permit by the cabinet in approving alternative

methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer, or use, in the manner required by that subchapter.

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) After the review required by subsection (1) of this section, or at any time, the cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:090.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation operations described in the existing application and approved under the current permit.

(b) When a revision is required by an order issued under Section 19 of this regulation.

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required under 405 KAR Chapters 7 through 24.

(2) Major revision.

(a) A revision is a major revision if the proposed change is of such scope and nature that the cabinet determines that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall include, but shall not be limited to:

1. Changes in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. Variances to approximate original contour requirements;

4. Construction or relocation of roads, where the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. Changes which may adversely affect significant fish and wildlife habitats or endangered species;

6. Proposed experimental practices;
7. Changes which may cause major impacts on the hydrologic balance;
8. Incidental boundary revisions that affect new watersheds;

9. Incidental boundary revisions that include diversions of perennial streams;

10. Incidental boundary revisions that include new areas from which coal will be removed, except these revisions shall be limited to ten (10) percent of the permit area acreage or five (5) acres, whichever is less.

(b) Major revisions shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this regulation; and shall be submitted on forms prescribed by the cabinet. In addition to the requirements of Section 8(5) of this regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) All revisions which are not determined by the cabinet to be major revisions are minor revisions. Minor revisions shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this regulation, except that minor field revisions described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this regulation, and the time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of application submittal. Minor revisions [; and] shall be submitted on forms prescribed by the cabinet.

(b) If the cabinet determines that a proposed minor revision is actually a major revision during the administrative completeness determination under Section 13 of this regulation, the cabinet shall so inform the applicant and return the application.

(c) The cabinet shall notify, in writing, those persons, if any, that the cabinet determines could have an interest that may be adversely affected by the proposed change. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) The following minor revisions shall be deemed minor field revisions which may be reviewed and processed in accordance with this section by the appropriate regional office of the department. However, if the number of persons that potentially could have an interest that may be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine that the proposed revision is a major revision and it shall not be processed under this paragraph.

1. Proposals for minor relocation of underground mine entries where:

a. There are no structures or "renewable resource lands" (as that term is defined in paragraph (b) of the definition provided in 405 KAR 7:020, Section 1) overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally

permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

2. Proposals for retention of concrete platforms and small buildings where:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure.

3. Proposals to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; [; and] roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement accepting maintenance responsibilities for the road.

4. Proposals to increase the diameter of culverts used as road crossdrains, not including culverts used for stream crossings, provided that the proposed culvert is the same type of pipe as the previously approved culvert.

5. Proposals to install additional culverts used as road crossdrains (not including culverts used for stream crossings), provided that the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and is the same type of pipe as the nearest downstream crossdrain.

6. Proposals for minor relocation of on-bench sediment control structures (dugouts only) in order to locate the structures at low spots on the same bench on which they were initially proposed, where:

a. The drainage area to the structure will remain the same as the original design;

b. The proposed location will not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary.

7. Proposals to retain diversions of overland flow (not including stream diversions) as permanent facilities where:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversions; and

b. The diversions have previously been designed to the standards for permanent diversions.

8. Proposals for relocation of topsoil storage areas where:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

9. Proposals to substitute plant species where:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the

equivalent function of the original species with respect to the previously approved: revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted.

10. Proposals to utilize hydroseeding for trees instead of planting trees or tree seedlings where:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. No change in tree species is involved unless concurrently approved under subparagraph 9 of this paragraph.

11. Proposals to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed.

12. Proposals to retain small depressions in the reclaimed area.

13. Proposals required by the cabinet to increase frequency of air blast monitoring.

14. Proposals required by the cabinet to increase frequency of air pollution monitoring.

15. Proposals to employ [additional or] more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls.

16. Proposals to add a portable coal crusher where:

a. The crusher and associated conveying equipment are a completely portable, trailer mounted unit;

b. The equipment will be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation will not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment will always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds.

17. Proposals to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated.

18. Proposals to relocate an explosive storage area within the existing permit area in accordance with 27 CFR 55.206, 55.218, 55.219, 55.220, and 30 CFR 77.1301(c).

19. Approval for minor relocation of support facilities such as conveyors, hoppers, and coal stockpiles where:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

20. Proposals for modifications of shared facilities where that modification has already been approved in a revision for one of the permittees by the Division of Permits and no additional performance bond was required for the initial revision.

21. Proposals to add a hopper to a permitted

area where:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond.

22. Proposals to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills.

23. Proposals to cut berms, provided that the cuts will not cause bypassing or short circuiting of on-bench structures or other sedimentation control structures.

24. Proposals to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 through 24.

25. Proposals for incidental boundary revisions for minor off-permit disturbances where:

a. The total acreage of the minor off-permit disturbances is no more than one (1) acre combined per proposal;

b. The cumulative acreage limitation established in the definition of "incidental boundary revision" in 405 KAR 7:020 is not exceeded;

c. The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish and wildlife, areas that may contain threatened or endangered species, or areas designated unsuitable for mining under 405 KAR Chapter 24;

d. The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

e. There are no structures such as excess spoil disposal fills, coal mine waste disposal fills or impoundments, or water impoundments involved;

f. The surface owner of the area to be permitted is a surface owner of disturbed area under the existing permit; and

g. An additional performance bond in the amount of \$5000 has been filed by the permittee.

h. If deemed necessary for any reason, the regional administrator may decline to review and process any proposal to permit an off-permit disturbance as a minor field revision and instead require that an application be submitted to the Division of Permits.

26. Except as provided below, proposals to remove sedimentation ponds previously approved as permanent impoundments where the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. However, proposals to remove sedimentation ponds in the following situations shall not be processed as minor field revisions:

a. Where the structure has a hazard classification of B or C;

b. Where the impoundment is a developed water resource land use;

c. Where the removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. Where the impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland where no other nearby source of water is available to the livestock); or

e. Where the impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values.

27. Proposals to approve exemptions from the requirement to pass drainage through sedimentation ponds for disturbed areas that, due to unexpected field conditions, will not drain to an approved sedimentation pond where:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains a MRP map certified by a registered professional engineer showing the location of the disturbed area and the drainage area clearly.

(e) Proposed minor revisions which only seek to change the engineering design of impoundments and diversions of overland flow where no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this regulation; however, the application shall be processed [logged] in, and written notice that [of receipt of] the application has been determined to be subject to this paragraph and is being forwarded for technical review shall be provided to the applicant. The time frame for review in Section 16(1)(a)3 of this regulation shall begin at the time of this notice [of receipt].

(4) Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved under this section.

(5) Fees. Applications for major and minor revisions shall include a basic fee of \$375, except that minor field revisions shall have no basic fee. If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application, except that no acreage fee shall be required for surface areas overlying underground workings which will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General

requirements for renewal. Any valid, existing permit issued pursuant to this chapter shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. Applications for renewal of permits shall be submitted within the time prescribed by Section 2(2)(b) of this regulation. Renewal applications shall be in a form and with content as required by the cabinet and in accordance with this section, and shall include at a minimum:

(a) The name and address of the permittee, the term of the renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this regulation;

(c) Evidence that liability insurance under 405 KAR 10:030, Section 4, will be provided by the applicant for the proposed period of renewal;

(d) A renewal fee of \$375;

(e) Evidence that the performance bond will continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional revised or updated information which may be required by the cabinet.

(3) Applications for renewal shall be subject to the requirements of Sections 8 through 11, 13 and 16 of this regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 17 of this regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations will continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, to any

persons who were parties to any informal conference held on the permit renewal and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest which is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review set forth in Section 24 of this regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to 405 KAR shall be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application, on forms provided by the cabinet, for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10;

4. Applicable waivers in accordance with 405 KAR 24:040, Section 2(5). Unless the waivers originally submitted with the permit application or subsequent revisions or amendments stipulate that they are transferable, new waivers shall be executed in favor of the proposed successor. If these waivers are not obtained, the successor may only conduct reclamation operations within the area previously exempted by waiver that were disturbed by the original permittee and may not extract coal within this area; and

5. A processing fee of \$375.

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent under subsection (3) of this section.

(c) Obtain sufficient performance bond coverage which will ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria specified in

Section 14 of this regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which will ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred, and which is at least equivalent to the bond of the existing permittee;

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice described in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted under a permit. A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee. However, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet may release the prior permittee from bond liability on the permit area if the successor in interest has filed a performance bond satisfactory to the cabinet, has received written approval of the cabinet for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under 405 KAR for reclamation of the areas affected by all prior permittees.

Section 23. Amendments. Except for incidental boundary revisions, no extensions to an area covered by a permit shall be approved under Section 20 (permit revisions) or Section 21 (permit renewals) of this regulation. All such extensions shall be made by application for another permit. However, if the permittee desires to add the new area to his existing permit in order to have existing areas and new areas under one (1) permit, the cabinet may so amend the original permit provided that the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits under 405 KAR.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:090.

(2) Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative proceedings as an objector shall:

(a) Have the right to judicial review as provided in KRS 224.085 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) Have the right to an action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits specified in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

FRANK DICKERSON, Commissioner

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: October 5, 1989

FILED WITH LRC: October 6, 1989 at 9 a.m.

PROPOSED AMENDMENTS RECEIVED BY OCTOBER 15, 1989

LEGISLATIVE RESEARCH COMMISSION
Block Grant Oversight
(Proposed Amendment)

1 KAR 4:005. Legislative oversight procedures applicable to federal block grants administered by state agencies.

RELATES TO: KRS 45.350 through 45.359, 273.446, 273.453

STATUTORY AUTHORITY: KRS 7.320

NECESSITY AND FUNCTION: Pursuant to KRS 45.351 and 273.453, state administering agencies, as defined by KRS 45.350(5) and 273.410(6), are required to submit any federal block grant application to the Legislative Research Commission for review and comments at least ninety (90) days prior to the submission of such application to the federal administering agency, as defined by KRS 45.350(4) and 273.410(4), for funding. KRS 273.453(1) provides that before any community services block grant application is submitted by a state administering agency to a federal administering agency for funding, the application must be reviewed by the Legislative Research Commission. KRS 45.357 and 273.453(2) provide for the submission of actual use and distribution reports and block grant status reports to the commission by state administering agencies. This regulation establishes the procedures applicable to the review and comment by the commission of federal block grant applications submitted to the commission by the state administering agencies, and procedures applicable to the review of reports on the actual use and distribution of block grant funds administered by state agencies, and on block grant program status reports filed with the commission by state administering agencies.

Section 1. Procedures implementing KRS 45.350 through 45.359 and 273.446 through 273.448(g) and 273.453, respecting the Legislative Research Commission's block grants application oversight functions and responsibilities are as follows:

[(1)] Every state administering agency applying for a federal block grant shall submit its respective block grant applications to the Legislative Research Commission ninety (90) days prior to the date of submission to a federal administering agency, as required by federal law, or no less than ninety (90) days before such agencies elect to submit their respective block grant applications to the appropriate federal administering agencies.]

[(1)] [(2)] State administering agencies submitting block grant applications to the commission shall forward one (1) complete copy each of such applications to: Coordinator for Block Grants Oversight, Legislative Research Commission, The State Capitol Building, Frankfort, Kentucky 40601.

[(2)] [(3)] When the Kentucky General Assembly is not in session, the commission automatically shall refer block grant applications as follows: Community Services, Preventive Health and Health Services, Maternal and Child Health Services, Alcohol and Drug Abuse and Mental Health Services, Social Services (Title XX), and Primary Care Block Grants shall be referred to the Interim Joint Committee on Health and Welfare; Elementary and Secondary Education

Block Grants shall be referred to the Interim Joint Committee on Education; Low-Income Home Energy Assistance Block Grants shall be referred to the Interim Joint Committee on Energy; Community Development Block Grants shall be referred to the Interim Joint Committee on Cities; and Justice Assistance Block Grants shall be referred to the Interim Joint Committee on Judiciary-Criminal. Block grants not falling within these classifications shall be referred by the commission to the interim joint committee with appropriate jurisdiction. Any committee designated herein shall be construed as a "designated review body" pursuant to KRS 45.350 and 273.410.

[(3)] [(4)] When the Kentucky General Assembly is in session the commission automatically shall refer block grant applications to the standing committees designated by the committee on committees of each house. Any committee designated herein shall be construed as a "designated review body" pursuant to KRS 45.350 and 273.410.

[(4)] [(5)] Within ten (10) days of receipt of any block grant application, the coordinator for block grants oversight for the commission, or his designee, shall provide for statewide notice of a public hearing on said application in accordance with 1 KAR 4:010, and shall notify the designated review body to which the application has been referred of the publication of said notice.

[(5)] [(6)] Whenever applications and supporting materials submitted to the commission are incomplete or insufficient, the commission or the coordinator for block grants oversight, or his designee, may request the state administering agency to make available to the designated review body additional background data and supporting information relating to the block grant pursuant to KRS 45.351(2), 273.448(h) and 273.453(1). All requests for additional materials shall be in writing under the signature of the coordinator for block grants oversight, or his designee, unless the commission otherwise directs and provides.

Every block grant application submitted by the state administering agency shall be complete in form and content as required by appropriate federal laws and regulations, and KRS 45.351(3).

[(6)] [(7)] Within the first thirty (30) days from the date of receipt of any block grant application, a public hearing shall be held by the designated review body to which the application has been assigned, and all deliberations shall be electronically recorded. The designated review body to which a block grant application has been referred shall conduct the public hearing on the application, except when the commission has authorized the establishment of a subcommittee of said committee to conduct the public hearing. All public hearings shall be restricted to the receipt of comments from the public and the state agency submitting the application, and shall be held in Frankfort, Kentucky.

[(7)] [(8)] Upon the request of the chairman of the designated review body to which the application has been referred, the commission may authorize the establishment of a subcommittee of the designated review body for the purposes of conducting the public hearing

and advising the designated review body on the block grant application. Upon the request of the designated review body chairman, the subcommittee may include three (3) members of the Interim Joint Committee on Appropriations and Revenue.

(8) [(9)] A copy of the application as submitted to the commission shall be available for public review, prior to the public hearing, in the commission's library. This copy shall not be removed by unauthorized persons. One (1) copy of the application under consideration also shall be available for public inspection at the public hearing on the application. Copies of the application for retention by the public must be obtained from the state administering agency and not from the commission.

(9) [(10)] Public inquiries about specific proposals contained in the application, including but not limited to the intent of the application and programs proposed to be funded by the application, must be directed to the appropriate state administering agency, and shall not be directed to the commission or its staff. Responses to such public inquiries are solely within the purview and responsibility of the state administering agency submitting the application. Copies of any public inquiry on any block grant application and responses thereto shall be submitted by the state administering agency to the Coordinator for Block Grants Oversight prior to the commission's public hearing on such application.

(10) [(11)] Transcriptions of hearings shall not be made unless the commission so directs. When a transcription is requested and approved by the commission, the requesting party shall reimburse the commission for its total costs for making such transcription.

(11) [(12)] Within sixty (60) days from the date the application is received by the commission, the designated review body shall complete its review of the application in accordance with the criteria specified in KRS 45.353(2) and shall make an affirmative finding of fact to the commission on the proposed use and distribution of funds to be provided in the application. [Pursuant to KRS 45.354 the commission shall review the findings of the designated review body and make written findings of fact to the state administering agency and the Governor regarding the agency's block grant application.]

Section 2. Procedures implementing a review by the Legislative Research Commission of reports on the actual use and distribution of federal block grant funds administered by a state administering agency shall be as follows:

(1) Pursuant to KRS 45.357 and 273.453(2), any state administering agency receiving federal block grant funds shall submit within thirty (30) days at the close of every federal fiscal year or at the close of the block grant's annual funding cycle, a report on the actual use and distribution of all block grant funds made available to the state administering agency during the preceding year.

(2) On or before the close of every federal year (September 30th), or at the close of a block grant's annual funding cycle, the Coordinator for Block Grants Oversight shall notify in writing the state administering agency receiving block grant funds, to submit to the commission five (5) copies each, of the actual

use and distribution of funds report on every block grant administered by the state administering agency for the preceding year. Five (5) copies of each actual use and distribution report shall be submitted by the state administering agency to: Coordinator for Block Grants Oversight, Legislative Research Commission, The State Capitol Building, Frankfort, Kentucky 40601.

(3) Copies of any actual use and distribution report will be processed by the commission's Coordinator for Block Grants Oversight, with one (1) copy being forwarded to the designated review body.

(4) Within sixty (60) days upon referral and receipt of an actual use and distribution report, the designated review body receiving the report shall forward to the commission any written comments or recommendations the designated review body has made regarding said reports.

(5) Upon completion of its review of a committee's report, the commission may notify the state administering agency of the commission's comments and recommendations.

Section 3. Procedures implementing the Legislative Research Commission review process regarding block grant program status reports as provided in KRS 45.357 and 273.453(2) are as follows:

[(1) Pursuant to KRS 45.357 and 273.453(2) within thirty (30) days following December 31, 1982, June 30, 1983 and each six (6) months thereafter, any state administering agency administering a federal block grant shall submit five (5) copies of a "block grant program status report" on each block grant it administers to the commission. The block grant program status report shall show programs and services provided under the block grant for the preceding six (6) months, and shall contain the following:]

[(a) Appropriations, allotments, expenditures, encumbrances, and available balance;]

[(b) The level of service budgeted, defined in terms of objectives and beneficiaries;]

[(c) The level of services delivered during the period;]

[(d) Alternatives for improved services delivery;]

[(e) Any changes in service authorized or necessary as a result of unanticipated changes in clientele, resources, or for other reasons; and]

[(f) An evaluation of results, including a description of measurements used.]

[The state administering agency shall submit five (5) copies of each status report to: Coordinator for Block Grants Oversight, Legislative Research Commission, The State Capitol Building, Frankfort, Kentucky 40601.]

(1) [(2)] Block grant program status reports will be processed by the commission's Coordinator for Block Grant Oversight. One (1) copy of each report shall be referred to the designated review body.

(2) [(3)] Within sixty (60) days upon referral and receipt of a status report, the designated review body receiving the status report shall complete its review and forward to the commission any written comments or recommendations the committee has made regarding the status report.

(3) [(4)] Upon completion of a review of the designated review body's report, the commission

may notify the state administering agency of the commission's comments and recommendations.

Section 4. Procedures implementing block grant audits and investigations as prescribed in KRS 45.357(4) and (5) are as follows:

(1) Whenever the Coordinator for Block Grants Oversight determines that an audit or investigation of any matter pertaining to the application for or expenditure of federal block grant funds should be conducted then he shall submit in writing a proposal for such action to the commission's director. No such audit or investigation shall be conducted without the prior approval of the commission.

(2) It shall be the responsibility of the state administering agency or any other agencies of state government retaining records, reports or documents pertaining to any block grant program under audit or investigation to cooperate with and to comply with request for any report, record or document essential to the conduct of such audit or investigation. It shall be the responsibility of the Coordinator for Block Grant Oversight to specify in writing to the state administering agency or other agencies concerned such reports, records or documents which are requested. The commission shall be informed of all such requests.

(3) Whenever a state administering agency or other agencies of state government fail to provide reports, records or documents essential to the conduct of any block grant audit or investigation, the Coordinator for Block Grants Oversight may request the commission or designated review body to subpoena such reports, records or documents. Any such request by the Coordinator for Block Grants Oversight shall be made in writing to the commission and shall specify the materials to be subpoenaed and the necessity for such action.

SENATOR JOHN A. "ECK" ROSE, Co-Chairman
REPRESENTATIVE DONALD J. BLANDFORD, Co-Chairman

APPROVED BY AGENCY: August 3, 1989

FILED WITH LRC: September 26, 1989 at 10 a.m.

PUBLIC HEARING: The Legislative Research Commission will hold a public hearing on 1 KAR 4:005 on November 21, 1989, at 10 a.m. in Room 107 of the Capitol Annex in Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed amendments to 1 KAR 4:005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Gordon F. Mullins, Legislative Research Commission, State Capitol, Room 406, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gordon F. Mullins

(1) Type and number of entities affected: 9 federal block grants.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This amendment deletes language found in the statutes, pursuant to KRS Chapter 13A. It will have no impact, direct or indirect cost or savings, or any effect on reporting, paperwork or state or local revenues.

TIERING: Was tiering applied? No. This amendment deletes language found in the statutes, pursuant to KRS Chapter 13A. The remaining requirements cannot be tiered because they govern one class that must be treated uniformly pursuant to federal and state law.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. P.L. 97-35 (Omnibus Budget Reconciliation Act of 1981). The amendments do not affect federal standards. The amendments do not impose stricter standards. The amendments simply delete language that repeats Kentucky statutes, pursuant to the drafting requirements of KRS Chapter 13A.

2. State compliance standards. Other than the drafting requirements of KRS Chapter 13A that require this amendment, there are no state compliance standards. The drafting requirements have no fiscal effect.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard; no additional or different responsibilities or requirements are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No

2. State whether this administrative

regulation will affect the local government or only a part or division of the local government.

3. State the aspect or service of local government to which this administrative regulation relates.

4. How does this administrative regulation affect the local government or any service it provides?

NOTE: The amendments to this regulation will not affect any aspect or service of local government. As required by KRS Chapter 13A, the regulation is amended to delete language found in statutes governing this regulation.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Proposed Amendment)**

201 KAR 2:010. Schools approved by the board.

RELATES TO: KRS 315.050

STATUTORY AUTHORITY: KRS 315.050, 315.191(1)

NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy is directed by KRS 315.050(1) to approve the schools or colleges of pharmacy whose curricula or course of studies are acceptable. This regulation is to assure that applicants for licensure are graduates of acceptable and approved colleges or schools.

Section 1. Every applicant for licensure as a pharmacist shall have graduated and received the first professional undergraduate degree from an accredited pharmacy degree program which has been approved by the Board of Pharmacy. Approved programs shall be those programs whose standards are equivalent to the minimum standards required by the American Council on Pharmaceutical Education for the accreditation of such programs. The American Council on Pharmaceutical Education, "Accreditation Standards and Guidelines," 8th Edition, July, 1984, effective January 1, 1985; and the American Council on Pharmaceutical Education, "College and Schools of Pharmacy, Accredited Professional Degree Programs," July 1, 1989 [1985] are incorporated by reference.

RICHARD E. MURRAY, President

RICHARD L. ROSS, Executive Director

APPROVED BY AGENCY: October 11, 1989

FILED WITH LRC: October 11, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1989 at 10 a.m. (EST) at the Office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Richard L. Ross,

Executive Director, Kentucky Board of Pharmacy,
1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross

(1) Type and number of entities affected: No fees affected by this amendment.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change affected by this amendment.

(2) Effects on the promulgating administrative body: To update and as mandated by the quadrennial review.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No fees are affected by this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were required.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This regulation is being amended as mandated by the quadrennial review of administrative regulations to conform to KRS 13A.222.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Proposed Amendment)**

201 KAR 2:015. Continuing education.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.110(1), 315.191(1)

NECESSITY AND FUNCTION: KRS 315.110(1) authorizes the board to promulgate regulations to insure the continuing pharmacy education of registered pharmacists. This regulation requires all registered pharmacists holding a license issued by this board to participate in continuing pharmacy education as a means of renewal of their licenses.

Section 1. (1) A "continuing education unit (CEU)" is defined as ten (10) contact hours of participation in a board accredited continuing pharmacy education program under responsible sponsorship, capable direction, and qualified instruction. The annual course of study year shall be from January 1 through December 31. Each licensee shall be required to complete a minimum of [.5 CEU (five (5) contact hours) in order to renew his/her license for the year 1979, 1.0 CEU (ten (10) contract hours) for the

year 1980, and] 1.5 CEU (fifteen (15) contact hours) for the year 1981 and each subsequent year thereafter. Continuing pharmacy education hours or units in excess of the number required at the time of renewal of license may not be transferred or applied to future requirements.

(2) A "unit" is defined as a measurement of value applied to a particular continuing pharmacy education activity and is the estimate by the board of the benefit it may contribute to competence in the practice of pharmacy.

Section 2. (1) Continuing education hours for credit may be compiled in the following areas if the sponsor grants the participant a certificate of completion:

- (a) Cassette and audio-visual presentation;
- (b) In-company professional seminars;
- (c) Accredited school of pharmacy continuing education programs;
- (d) Postgraduate courses in pharmaceutical sciences;
- (e) Correspondence courses;
- (f) Programs granted continuing education credit by other states;
- (g) The American Council on Pharmaceutical Education;
- (h) Continuing education television series;
- (i) Programs sponsored by allied professional groups; and
- (j) Professional society and association sponsored programs.

(2) The board approval of each program shall expire at the end of three (3) years.

Section 3. Continuing education sponsors are responsible for submitting to the board for final accreditation continuing education programs for participants.

(1) A sponsor shall be any person, school, association, company, corporation or group who wishes to develop a continuing education program.

(2) Programs should be submitted to the board at least sixty (60) days prior to planned participation so the participants can know the value of such an experience prior to actual participation.

(3) Program changes must be made to and accredited by the board, or the evaluation and accreditation of the program becomes [null and] void.

(4) Continuing education credit will be given only once for each program per participant.

(5) Sponsors shall retain a file of participants program completion for three (3) years.

Section 4. (1) Sponsors and pharmacists requesting approval of continuing pharmacy education shall submit an application containing such information as the board may require on forms provided by the board. Pharmacists must keep valid records, receipts, and certifications of continuing pharmacy education programs completed for three (3) years and submit such certification to the board on request.

(2) Submission of fraudulent statements or certificates concerning continuing pharmacy education will subject the pharmacist to revocation or suspension of license as provided in KRS 315.127(1).

Section 5. Pharmacists are responsible to submit on forms provided by the board a list of accredited continuing pharmacy education

programs with their annual renewal as scheduled in Section 1. If [In the event] any licensee shall fail to submit a list of continuing pharmacy education programs by the 1st day of February, the executive director of the board shall notify such licensee at his[/her] last known address that his[/her] license may be suspended. A pharmacist may be granted a deferral on a year to year basis at the discretion of the board for such reasons as illness, incapacity, or other extenuating circumstances. A pharmacist first licensed by the board within twelve (12) months immediately preceding the annual renewal date is exempt from the continuing pharmacy education provisions.

Section 6. All pharmacists shall keep the board informed of their correct addresses.

Section 7. CEU may be transferred from another state to Kentucky if the transfer state recognizes Kentucky CEU.

Section 8. If [In the event] a pharmacist fails to renew his license to practice pharmacy, for any reason, for one (1) to five (5) years, the license may [shall] be renewed upon proper application and upon demonstrating to the board that the applicant has completed an acceptable continuing education program. The board may require such an applicant to demonstrate that he [or she] has completed a maximum of seventy-five (75) hours of continuing education. However, under no circumstances, shall such an applicant be required to complete more than fifteen (15) hours of continuing education for each year the applicant failed to renew his license. The board, in the alternative, may renew a license of a pharmacist who has failed to renew his license upon proper application and upon successful completion of an acceptable examination.

RICHARD E. MURRAY, President

RICHARD L. ROSS, Executive Director

APPROVED BY AGENCY: October 11, 1989

FILED WITH LRC: October 11, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1989 at 10 a.m. (EST) at the Office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross

(1) Type and number of entities affected: No fees affected by this amendment.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change affected by this amendment.

(2) Effects on the promulgating administrative body: To update and as mandated by the quadrennial review.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No fees are affected by this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were required.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This regulation is being amended as mandated by the quadrennial review of administrative regulations to conform to KRS 13A.222.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Proposed Amendment)

201 KAR 2:020. Examinations.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.050(2), 315.191(1), (2), (4)

NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy is directed by KRS 315.191(4) to prescribe the time, place, method, manner, scope and subjects of examination of applicants for license to practice pharmacy in the Commonwealth. This regulation will establish continued fair and impartial examinations.

Section 1. No license to practice pharmacy, other than one issued by reciprocity, shall be issued except upon the successful passage of an examination prescribed by the Kentucky Board of Pharmacy.

Section 2. All examinations held by the Kentucky Board of Pharmacy shall be conducted at such locations within the state as may be designated by the board and shall be held at least twice annually. Detailed information as to the time and place of examinations may be procured from the executive director of the board.

Section 3. Examinations shall be adequate to test the knowledge, education and competency of applicants and shall consist of three (3) tests: the National Association of Boards of Pharmacy Licensure Examination, an operative/practical examination, and jurisprudence.

Section 4. No person shall be deemed to have successfully passed an examination conducted by the Kentucky Board of Pharmacy unless he [or she] obtains the following scores:

(1) At least seventy-five (75) on the basis of the National Association of Boards of Pharmacy Licensure Examination in order to meet the requirements of Article II, Section 4, (A)(3), of the National Association of Boards of Pharmacy Bylaws. The operative/practical and jurisprudence grades shall not be used in computing the National Association of Boards of Pharmacy Licensure Examination score; [General overall average of seventy-five (75); provided, however, that the jurisprudence and operative examination grades shall not be used in computing the average of the applicant. No less than sixty (60) on any subject. A score of less than sixty (60) constitutes failure;]

(2) At least seventy-five (75) on any operative/practical examination;

(3) At least eighty (80) on jurisprudence.

Section 5. If [In the event] an applicant fails [any section or fails] to obtain the necessary scores in any of the three (3) tests described in Section 3 of this regulation, [a general overall average of seventy-five (75),] he may upon proper application retake such tests [section] upon the payment of a fee of seventy-five (75) dollars plus [but does not include] any direct costs for test materials and supplies. If subsequent reexamination is required, an additional fee equal to the original examination fee must be submitted. An applicant for reexamination must sit for such examination within one (1) year from the date he first fails the examination. [An applicant shall be permitted only one (1) partial reexamination. An additional fee equal to the original examination fee shall be submitted with the application for each subsequent reexamination.]

Section 6. All results of examinations [(including one (1) set of questions)] shall be preserved. The questions shall be prepared or approved by the board. Written examinations shall be conducted in such manner that the results shall be entirely fair and impartial, the applicant being known only by numbers so that no examiner or member of the board may identify the paper of the applicant until after the examiners certify the results [thereof].

Section 7. An examination fee shall not be refunded after an application has been accepted by the board.

RICHARD E. MURRAY, President

RICHARD L. ROSS, Executive Director

APPROVED BY AGENCY: October 11, 1989

FILED WITH LRC: October 11, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1989 at 10 a.m. (EST) at the Office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort. Individuals interested in attending this hearing shall notify this agency

in writing by November 16, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross

(1) Type and number of entities affected: No fees affected by this amendment.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change affected by this amendment.

(2) Effects on the promulgating administrative body: To update and as mandated by the quadrennial review.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No fees are affected by this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were required.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This regulation is being amended as mandated by the quadrennial review of administrative regulations to conform to KRS 13A.222.

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Proposed Amendment)

201 KAR 2:030. Reciprocity; temporary license.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.191, 315.210

NECESSITY AND FUNCTION: This regulation is to provide for interstate reciprocity of pharmacists licensure. It establishes uniform minimum standards and requirements.

Section 1. License by reciprocity means a license to practice pharmacy issued by the Kentucky Board of Pharmacy (hereafter referred to as the board) pursuant to this regulation. An applicant must have had the legal qualifications at the time of examination and registration in the state from which he applies which would enable him to qualify for registration by the board.

Section 2. An applicant who has failed a Kentucky Board of Pharmacy examination shall not be eligible for license by reciprocity. The board will consider only those official applications for reciprocity approved by the board. An applicant must include the reciprocal registration fee fixed by the board with his application for reciprocal licensure.

Section 3. The board may accept reciprocity from states which are active members of the National Association of Boards of Pharmacy and which under equivalent conditions will grant reciprocal licensure to pharmacists duly licensed by examination by the board. The applicant must be in good standing in the state from which he applies.

Section 4. All applicants for license by reciprocity must appear in person before the board or a member thereof, for an examination before any certificate of registration will be issued. Applicants shall be required to take an examination in jurisprudence. An applicant who has not actively engaged in the practice of pharmacy as a registered pharmacist during the year preceding the time of filing the application may be required to take a practical examination.

Section 5. The purpose of a temporary license is to enable applicants for license by reciprocity to be able to procure legal authorization to begin practicing in Kentucky without awaiting a meeting of the board. It is not intended that a temporary license shall be a substitute for a pharmacist license.

Section 6. If [Whenever] an applicant for a license by reciprocity satisfies the board that he has met all the requirements [prescribed therefor] and [the] regulations [of the board thereunder], the executive director [secretary] may issue, on behalf of the board, a temporary license to such person for the practice of pharmacy. No person who is an applicant for license by examination in Kentucky shall be issued a temporary license.

Section 7. A temporary license issued pursuant to this regulation shall entitle the holder to practice pharmacy for a period of not more than six (6) months from issuance [thereof], unless the temporary license is sooner cancelled by the executive director [secretary]. Applicants are admonished not to accept positions as pharmacists or attempt to practice as pharmacists until a temporary license is received.

Section 8. The executive director [secretary] may at any time, and for reasons deemed sufficient, without hearing, cancel any [or all] temporary licenses in effect and shall immediately cancel any temporary license in

effect upon direction by the board or upon denial by the board of the holder's application for a pharmacist license. No temporary license issued pursuant to this regulation shall create a permanent or vested property interest in the licensee.

Section 9. The executive director [secretary] of the board shall prepare or cause to be prepared all forms which he considers desirable and appropriate in connection with temporary licenses. Each temporary license shall expressly state the date of issuance and that it is for a definite period not in excess of six (6) months from the date of issuance.

Section 10. The board reserves the right to deny any reciprocal application for a good and just reason, and if imposed [in the event of so doing], seventy-five (75) percent of the fee paid to the board [it] will be refunded.

RICHARD E. MURRAY, President
RICHARD L. ROSS, Executive Director

APPROVED BY AGENCY: October 11, 1989

FILED WITH LRC: October 11, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1989 at 10 a.m. (EST) at the Office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross

(1) Type and number of entities affected: No fees affected by this amendment.

(a) Direct and indirect costs or savings to those affected:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change affected by this amendment.

(2) Effects on the promulgating administrative body: To update and as mandated by the quadrennial review.

- (a) Direct and indirect costs or savings:
1. First year:
 2. Continuing costs or savings:
 3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No fees are affected by this

amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were required.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This regulation is being amended as mandated by the quadrennial review of administrative regulations to conform to KRS 13A.222.

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Proposed Amendment)

201 KAR 2:040. Registration of interns.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.050(4), (5), 315.191(1)

NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy is authorized by KRS 315.050(1) to determine the minimum experience internship required to qualify for examination as a registered pharmacist. KRS 315.191 also authorizes the board to establish requirements and standards for educational, technical and professional qualifications of applicants for license to practice pharmacy. This regulation is to assure uniformity of the minimum experience internship.

Section 1. Every person who desires to become a pharmacy intern in Kentucky shall register as an intern with the Kentucky Board of Pharmacy. No credit for internship shall be recognized by the board for periods prior to such registration. To qualify for registration, a person shall have successfully completed two (2) full year's attendance at an accredited college or university, and shall furnish proof of such to the executive director of the board prior to the registration.

Section 2. The practical experience required prior to licensure shall be referred to as internship. The minimum internship required as to a prerequisite for licensure examination shall be 1,500 hours; not more than forty-eight (48) hours of internship may be allowed for credit in any one (1) calendar week.

Section 3. The board shall furnish application blanks and issue a numbered registration identification card to each applicant who meets the requirements for registration as a registered intern upon receipt of a completed registration form and the fee. The registered intern shall have his registration identification card in his possession at all times when on duty and it shall be exhibited by the holder upon request of any member of the board or its authorized agents.

Section 4. (1) Internship registration shall be limited to those persons who are actively

engaged in meeting the academic or practical experience requirements for licensure examination. No person who terminates the educational requisites is entitled to the privileges of internship registration, with the exception of any hardship case given written approval by the board.

(2) No person unregistered [not registered] with the board as a pharmacy intern shall take, use, or exhibit the title of pharmacy intern, pharmacy apprentice, pharmacy extern, or any term similar or like import.

(3) Internship shall be credited only when it has been obtained in a pharmacy acceptable to the board for that purpose.

(4) Internship may be acquired only under the supervision of a preceptor. The preceptor, the pharmacy intern's supervising pharmacist, must have been licensed by the board for at least one (1) year. He must be actively engaged in the practice of pharmacy full-time in the pharmacy where the pharmacy intern is to obtain his internship. A preceptor may supervise only one (1) pharmacy intern at a time.

Section 5. A pharmacy intern having served part or all of his time in a pharmacy outside the state shall be given credit for the same, when affidavit(s) of his said employment is made by his preceptor(s) showing the exact time and dates served, and when same is attested by the Board of Pharmacy of [at] that state. In such cases, their requirements for internship must be comparable and acceptable to the Kentucky board.

Section 6. Internship report forms may be obtained from the board and shall be filed in accordance with printed instructions on such forms.

RICHARD E. MURRAY, President

RICHARD L. ROSS, Executive Director

APPROVED BY AGENCY: October 11, 1989

FILED WITH LRC: October 11, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1989 at 10 a.m. (EST) at the Office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross

(1) Type and number of entities affected: No fees affected by this amendment.

(a) Direct and indirect costs or savings to

those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change affected by this amendment.

(2) Effects on the promulgating administrative body: To update and as mandated by the quadrennial review.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No fees are affected by this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were required.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This regulation is being amended as mandated by the quadrennial review of administrative regulations to conform to KRS 13A.222.

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Proposed Amendment)

201 KAR 2:080. Prescription substitution.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.191(2)

NECESSITY AND FUNCTION: Although KRS 217.819 permits the exercise of product selection when there is no prohibition for such selection listed in the nonequivalent drug product formulary, this [the Kentucky Generic Drug Formulary Act of 1972 provides for selection of an equivalent brand name drug if listed in the formulary, there is no prohibition for such selection and dispensing of drugs not listed in this formulary. This] regulation protects [provides for protection of] the public and practitioners in assuming that the medications and drugs dispensed are acceptable.

Section 1. Except as provided in KRS 217.822 [elsewhere by statute], whenever any registered pharmacist is requested to sell, furnish, or compound any drug, medicine, chemical or pharmaceutical preparation by means of a prescription and substitutes or causes to be substituted therefore, any other drug, medicine, chemical, or pharmaceutical preparation without specific or express permission, approval, or consent of the prescriber, the board may find such person guilty of engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public, and may revoke or suspend his license as prescribed by law.

Section 2. If approval or consent is obtained from the prescriber, the brand name or the name of the manufacturer of the drug, medicine, chemical or pharmaceutical preparation dispensed must be stated on the prescription by the pharmacist.

RICHARD E. MURRAY, President

RICHARD L. ROSS, Executive Director

APPROVED BY AGENCY: October 11, 1989

FILED WITH LRC: October 11, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1989 at 10 a.m. (EST) at the Office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross

(1) Type and number of entities affected: No fees affected by this amendment.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change affected by this amendment.

(2) Effects on the promulgating administrative body: To update and as mandated by the quadrennial review.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No fees are affected by this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were required.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This

regulation is being amended as mandated by the quadrennial review of administrative regulations to conform to KRS 13A.222.

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Proposed Amendment)

201 KAR 2:165. Transfer of prescription information.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.191(1), (5)

NECESSITY AND FUNCTION: KRS 315.191(5) provides for the board to adopt regulations necessary to control the transfer of prescriptions. This regulation will set out the requirements for the transfer of information.

Section 1. The transfer of original prescription information for any prescription except Schedule II Controlled Substances for the purpose of refill dispensing is permissible if communicated directly between two (2) pharmacists on a one (1) time basis subject to the following requirements:

(1) The transferring pharmacist shall record the following information:

(a) That the prescription is void;

(b) The name and address of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information;

(c) The DEA registration number of the pharmacy to which it was transferred if it is a controlled substance;

(d) The date of the transfer and the name of the pharmacist transferring the information.

(2) The pharmacist receiving the transferred prescription shall record the following information:

(a) That the prescription is a transfer;

(b) The date of issuance of the original prescription;

(c) The refill authorization on the original prescription;

(d) The date of original dispensing;

(e) The refill authorization remaining and the date of the last refill;

(f) The pharmacy's name and address and the original prescription number from which the prescription was transferred;

(g) The name of the transferor pharmacist;

(h) All additional information required by law.

(3) Both the original prescription and the transferred prescription must be maintained for a period of five (5) years from [form] the date of the last refill.

(4) Pharmacies electronically accessing the same prescription record must satisfy all information of a manual mode for a prescription transfer.

Section 2. Violation of any provision of this regulation constitutes unethical or unprofessional conduct in accordance with KRS 315.121.

RICHARD E. MURRAY, President

RICHARD L. ROSS, Executive Director

APPROVED BY AGENCY: October 11, 1989

FILED WITH LRC: October 11, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross

(1) Type and number of entities affected: No fees affected by this amendment.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change affected by this amendment.

(2) Effects on the promulgating administrative body: To update and as mandated by the quadrennial review.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No fees are affected by this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were required.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. This regulation is being amended as mandated by the quadrennial review of administrative regulations to conform to KRS 13A.222.

GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Proposed Amendment)

201 KAR 2:175. Emergency/72 hour prescription refills.

RELATES TO: KRS Chapters 217, 315

STATUTORY AUTHORITY: KRS 217.215(3), 315.191

NECESSITY AND FUNCTION: This regulation sets out the conditions whereby a prescription may be refilled in an emergency situation and the prescriber is unavailable.

Section 1. If [In the event] a pharmacist receives a request for a prescription refill with no refill authorized and the pharmacist is unable to readily obtain refill authorization from the prescriber, the pharmacist may dispense a one (1) time emergency refill of up to a seventy-two (72) hour supply of the medication when [providing that]:

(1) The prescription refill is not for a controlled substance;

(2) The medication is essential to the maintenance of life or to the continuation of therapy in chronic conditions;

(3) In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences [and/]or may be detrimental to the patient's welfare and cause physical or mental discomfort;

(4) The pharmacist notes on the prescription record the date, the quantity dispensed, and his name or initials; and

(5) In all situations an emergency refill must be followed by authorization from the prescriber for continued therapy.

Section 2. Violation of any provision of this regulation constitutes unethical or unprofessional conduct in accordance with KRS 315.121.

RICHARD E. MURRAY, President

RICHARD L. ROSS, Executive Director

APPROVED BY AGENCY: October 11, 1989

FILED WITH LRC: October 11, 1989 at 11 a.m.

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross

(1) Type and number of entities affected: No fees affected by this amendment.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change affected by this amendment.

(2) Effects on the promulgating administrative body: To update and as mandated by the quadrennial review.

(a) Direct and indirect costs or savings:

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(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No fees are affected by this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were required.

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(a) Necessity of proposed regulation if in conflict:

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TIERING: Was tiering applied? No. This regulation is being amended as mandated by the quadrennial review of administrative regulations to conform to KRS 13A.222.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Proposed Amendment)

201 KAR 2:190. Return of prescription drugs prohibited.

RELATES TO: KRS Chapters 217 and 315

STATUTORY AUTHORITY: KRS 315.010(5), 315.191(1), (5)

NECESSITY AND FUNCTION: To prevent the dispensing of drugs that have been adulterated, contaminated or misbranded.

Section 1. No pharmacy, pharmacist, or agent thereof shall accept for reuse or resale a prescription drug. [Provided, however, that] This regulation shall not apply to sealed/unopened unit dose, unit of use or tamper resistant drug packaging.

Section 2. Violation of any provision of this regulation constitutes unethical or unprofessional conduct in accordance with KRS 315.121.

RICHARD E. MURRAY, President

RICHARD L. ROSS, Executive Director

APPROVED BY AGENCY: October 11, 1989

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross

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(3) Assessment of anticipated effect on state and local revenues: No fees are affected by this amendment.

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TOURISM CABINET
Department of Fish & Wildlife Resources
(Proposed Amendment)

301 KAR 1:200. Seasons and Limits for angling.

RELATES TO: KRS 150.010, 150.025, 150.470, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: In order to insure the continuance of viable and desirable populations of fish, it is necessary to govern the size and numbers anglers can harvest. This amendment is necessary to set special limits on the Herrington Lake tailwater trout fishery [specify the brook trout waters of Poor Fork in Letcher county and Martins Fork in Harlan County].

Section 1. The statewide creel limits, size limits and possession limits for taking fish by angling shall be as follows, except as specified in Section 3 of this regulation and as provided in 301 KAR 1:180:

	Size Limit Inches	Daily Creel Limit	Possession Limit
Black bass:*			
Largemouth	12)	10	20
Smallmouth	12)	Singly	Singly
Kentucky (spotted)	None)	or in	or in
Coosa	12)	Aggregate	Aggregate
Rock bass (goggle eye or redeye)	None	15	30
Walleye and their hybrids	15	10	20
Sauger	None	10	20
Muskellunge and their hybrids	30	2	2
Northern pike	None	5	10
Chain pickerel	None	5	10
White bass and yellow bass	None	60	60
Striped bass (rock- fish) and their hybrids	15	5	5
Crappie	None	60	60
Rainbow trout & brown trout	None	8	8
Brook trout	10	2	2

*For size limit purposes, any black bass, with the exception of the smallmouth, with a patch of teeth on its tongue is considered to be a Kentucky bass.

Section 2. Seasons for all species is year around.

Section 3. The following special limits apply. All other angling limits and seasons apply as set forth in Sections 1 and 2 of this regulation.

(1) The impounded waters of Grayson Lake. The size limit on largemouth bass and smallmouth bass is fifteen (15) inches. There are no daily creel or possession limits on crappie.

(2) The impounded and flowing waters of Dix River and its tributaries upstream from Herrington Lake Dam:

Size Limit Inches	Daily Creel Limit	Possession Limit
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White bass, striped
bass (rockfish) and
their hybrids

*	20	40
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*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

(3) Dix River from Herrington Lake Dam downstream a distance of two (2) miles. The size limit for brown trout is fifteen (15) inches. The daily creel and possession limits for brown trout is three (3) fish. The daily creel and possession limits for brown trout and rainbow trout combined is eight (8) fish of which no more than three (3) fish can be brown trout. Fishing is permitted only with artificial lures or flies. Possession of fish eggs, small bait fish, insects or worms or other similar organic bait or parts thereof while in the possession of fishing tackle in the above described two (2) mile section of Dix River is prohibited.

(4) [(3)] The impounded waters of Taylorsville Lake. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches.

(5) [(4)] The impounded waters of Kentucky and Barkley Lakes, including the connecting canal. The size limit for largemouth bass and smallmouth bass is fourteen (14) inches, except that the daily limit may include no more than one (1) and the possession limit no more than two (2) less than fourteen (14) inches in length. The creel and possession limits for crappie are thirty (30) and sixty (60) respectively.

(6) [(5)] The impounded waters of Cave Run and Dewey Lakes. The size limit for largemouth bass and smallmouth bass is fifteen (15) inches.

(7) [(6)] The impounded and flowing waters of Barren River and its tributaries upstream from Barren River Lake Dam.

	Size Limit Inches	Daily Creel Limit	Possession Limit
Crappie	10	30	60
White bass, striped bass (rockfish) and their hybrids	*	20	40

*No more than five (5) fish of a daily limit or ten (10) fish of a possession limit may be fifteen (15) inches or longer.

(8) [(7)] The impounded waters of Cumberland Lake. The size limit for largemouth and smallmouth bass is fifteen (15) inches. The creel and possession limits for striped bass (rockfish) are three (3) and three (3) respectively.

(9) [(8)] In the following brook trout streams fishing is permitted only with artificial flies or lures with a single hook. Possession of fish eggs, small fish, insects, worms, or other similar organic bait or parts thereof while in the possession of fishing tackle is prohibited:

(a) Shillalah Creek, Bell County (outside boundary of Cumberland Gap National Park);

(b) Martins Fork and tributaries in Harlan County from Left Fork upstream 2.3 miles to the Cumberland Gap National Historical Park boundary;

- (c) Bad Branch, Letcher County;
- (d) Poor Fork and tributaries in Letcher County from the headwaters downstream to the first crossing of Highway 392;
- (e) Parched Corn Creek, Wolfe County.

Section 4. Measure all fish from the end of the lower jaw to the tip of the tail with fish laid flat on rule, mouth closed and tail lobes squeezed together. All fish caught that are smaller than those prescribed minimum lengths shall be returned immediately to the waters from which they were taken in the best physical condition possible. Under no circumstances may a fisherman remove the head or the tail or part thereof of any of the above-named fish while in the field and before he has completed fishing for the day.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman

APPROVED BY AGENCY: October 12, 1989

FILED WITH LRC: October 12, 1989 at 2 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on Wednesday, November 22, 1989 at 9 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Peter W. Pfeiffer, Division of Fisheries, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: There are over 1 million licensed and unlicensed anglers in Kentucky. Approximately 40,000 of those anglers fished for trout.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to affected entities because fishing frequency and fishing success will not be changed. The average angler costs and economic benefit will continue to accrue at the same rate.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No reporting or paperwork is involved.

(2) Effects on the promulgating administrative body: No additional effort will be required. Policing and evaluation is a part of ongoing patrol and study.

(a) Direct and indirect costs or savings: Very small increased costs will occur as a result of time spent apprehending violators.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Slight increase in citations and associated law enforcement reports. Informational brochures will be expanded.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on budgets, funding manpower levels or equipment needs. No loss in licensed sales or decrease in local economic impact is expected.

(4) Assessment of alternative methods; reasons

why alternatives were rejected: No alternative methods were considered because the imposition of harvest restrictions is the only effective means of achieving quality fishing experiences, assuring reproductive viability while at the same time allowing for a reasonable number of fish to be taken from the population.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, overlapping, or a duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Comments from the Kentucky Council of Trout Unlimited indicate high acceptability of these regulation changes.

TIERING: Was tiering applied? No. Only one entity, the sport fisherman, is impacted by this regulation. There is no social or biological justification for nonuniform application of angling requirements.

TOURISM CABINET

Department of Fish and Wildlife Resources (Proposed Amendment)

301 KAR 2:220. Hunting seasons for migratory birds.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.603, 150.630, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to the seasons and limits for the taking of specified migratory birds, to the associated permitting and harvest reporting requirements, and to restrictions in the use of blinds and pits. It is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource. The framework of this regulation falls within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates and hunting rules.

Section 1. Definitions. (1) "Blind" means any form of concealing enclosure, including a pit or [, from which one may shoot game or observe wildlife including] an anchored, stationary, or drifting boat from which hunting occurs [waterfowl are hunted].

(2) "Permanent blind" means any blind which is in place more than twenty-four (24) hours.

(3) "Commercial waterfowl hunting area" means any area of land or water used in whole or in part for the taking of migratory waterfowl where a monetary charge is made for hunting.

(4) "Noncommercial waterfowl hunting area" means any area used in whole or in part for the taking of migratory waterfowl where no monetary charge is made.

(5) "Waterfowl" means all species of ducks, coots, mergansers and geese.

Section 2. Seasons for Gun and Archery. (1) Sora rails, Virginia rails, common moorhens, and purple gallinules: November 23 [24] through January 20.

(2) Ducks, coots and mergansers: November 23 [24] through November 26 [27] and December 13 [10] through January 7 [4].

(3) Geese.

(a) Eastern Zone: November 23 [24] through January 31, east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, East on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to U.S. 41 and then north on U.S. 41 to the Kentucky-Indiana border.

(b) Western Zone. This zone consists of the area to the west of the boundary described in paragraph (a) of this subsection. For the purpose of controlling the goose harvest, the Western Zone is subdivided into the Ballard Reporting Area and associated counties and the Henderson-Union Reporting Area and associated counties. Seasons within the Western Zone are specified as follows:

1. Canada Goose Season: December 2 [10] through January 31 [28], unless harvest quotas are met as described below.

a. Ballard Reporting Area. This reporting area lies within the following boundary: starting at the northwest city limits of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe. Should it be determined that the quota of 20,000 [14,200] Canada geese will be filled prior to January 31 [28], the goose hunting season shall close in the Ballard Reporting Area. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

b. Counties associated with the Ballard Reporting Area. The counties associated with the Ballard Reporting Area, those portions of Ballard (excluding Ballard Reporting Area), McCracken, Graves, Carlisle, Hickman, Fulton and Marshall counties in the Western Zone, shall remain open for seven (7) days after the closure of the Ballard Reporting Area or until January 31 [28], whichever occurs first.

c. Henderson-Union Reporting Area. This reporting area includes those portions of Henderson and Union Counties within the Western Zone. Should it be determined that the quota of 6,000 [4,500] Canada geese will be filled prior to January 31 [28], the goose hunting season shall close in the Henderson-Union Reporting Area. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

d. Counties associated with the Henderson-Union Reporting Area. The counties associated with the Henderson-Union Reporting Area, those portions of Lyon, Crittenden and Livingston counties in the Western Zone shall remain open for seven (7) days after the closure of the Henderson-Union Reporting Area or until

January 31 [28], whichever occurs first.

2. Season for goose species other than Canada geese (snow and blue geese, white-fronted geese, and brant): November 23 [24] through January 31 [28], or whenever the Canada goose season closes, whichever occurs first.

Section 3. Limits for Gun and Archery. (1) Ducks. The daily bag limit is three (3) and shall include no more than two (2) mallards (no more than (1) of which shall be a female), and one (1) black duck, two (2) wood ducks, one (1) redhead, and one (1) pintail of either sex. [Pintail may be taken only during the first four (4) day segment of the season.] No canvasbacks shall be taken. The possession limit is double the daily bag.

(2) Coots. The daily bag limit is fifteen (15) and the possession limit is thirty (30).

(3) Mergansers. The daily bag limit is five (5) of which no more than one (1) shall be a hooded merganser. Possession limit is double the daily bag limit.

(4) Geese.

(a) The bag limit is five (5) with no more than two (2) Canada and two (2) white-fronted geese. During January in the Western Zone, the bag limit is five (5) with no more than three (3) Canada and two (2) white-fronted geese.

(b) The possession limit is double the daily bag limit. [ten (10), not to include more than four (4) Canada and four (4) white-fronted geese.]

(5) Sora and Virginia Rails. The bag and possession limits are twenty-five (25) singly or in the aggregate.

(6) Common Moorhens and Purple Gallinules. The bag and possession limits are fifteen (15) and thirty (30), respectively, singly or in the aggregate of the two (2) species.

Section 4. Shooting Hours. One-half (1/2) hour before sunrise to sunset for all species listed in this regulation except as specified in Section 8 of this regulation, and from one-half (1/2) hour before sunrise to 3 p.m. for waterfowl during the Canada goose season in the Ballard Reporting Area.

Section 5. Shot Size Restrictions. No lead shot larger than BB or steel shot larger than F shall be in possession while hunting the species listed in this regulation.

Section 6. Falconry Season. October 22 [November 1] through January 31, except the season for Canada geese in Fulton County shall not open until October 26 [20]. All legal species listed in this regulation may be taken by falconry.

(1) Falconry limits. The bag and possession limits are three (3) and six (6), respectively, of any legal species listed in this regulation, singly or in the aggregate.

(2) Hunting hours for falconry. The hunting hours shall conform with the shooting hours stated in Sections 4 and 8 of this regulation.

Section 7. Wildlife Management Area Blind Regulations. The following restrictions apply to all wildlife management areas except those excluded in Section 8 of this regulation.

(1) Permanent blinds are not permitted. Decoys and temporary blinds shall be removed at the end of each hunting day.

(2) No blind shall be established less than 200 yards from any other blind or waterfowl refuge areas.

(3) No more than four (4) persons shall occupy a single blind at any one time.

(4) Designated recreation areas and access points are closed to hunting of all species listed in this regulation.

Section 8. Exceptions for Specified Wildlife Management Areas and Counties. Other sections or regulations apply unless specified below. Pit and blind restrictions described in this section and Section 11 of this regulation shall not apply to periods of the falconry season as described in Section 6 of this regulation that do not coincide with waterfowl gun hunting seasons.

(1) Ballard Wildlife Management Area, except the Miller Tract, located in Ballard County.

(a) Species and seasons.

1. Geese: December 12 through January 31 or until the Ballard Reporting Area quota is reached [28].

2. Ducks, coots and mergansers: December 13 [12] through January 7 [4].

3. No hunting is permitted on Sundays or Mondays during December, on Sundays during January or on Christmas and New Year's Day.

4. No more than three (3) persons shall occupy a single blind at the same time.

(b) General rules. Waterfowl hunters shall have no more than ten (10) shells in their possession. Any hunter under the age of eighteen (18) years shall be accompanied by an adult. Any person whose transportation to and from blinds is furnished by the department shall have his gun encased. Hunting shall be by advanced application or as otherwise authorized.

(c) Shooting hours: one-half (1/2) hour before sunrise to 12 noon.

(2) Swan Lake Wildlife Management Area located in Ballard County. The Upper Blenderman Tract, located to the north of Holloway Landing Road and marked by signs, is open to hunting of all legal species listed in this regulation.

(3) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Closed areas. Smith Bay, Energy Lake, and Long Creek Pond as indicated by signs are closed to hunting. The eastern two-thirds (2/3) of Duncan Bay on Kentucky Lake is closed to all activity November 1 through March 15, as indicated by signs and buoys. The Environmental Education Center is closed to hunting of all species listed in this regulation.

(b) LBL permit. An annual LBL hunting permit is required for hunting of all legal species listed in this regulation on all shoreline areas along Kentucky and Barkley Lakes from the water's edge to twenty-five (25) yards above elevation 359' and inland areas. Waterfowl [and coot] hunting from shoreline areas along Lake Barkley is allowed according to subsection (4) of this section. No hunting of any species listed in this regulation is permitted on inland areas during quota gun deer hunt days as listed in 301 KAR 2:111. Permanent blinds are not permitted on inland areas nor along the Kentucky Lake shoreline area. Decoys and temporary blinds shall be removed at the end of each hunting day.

(4) Lake Barkley Wildlife Management Area located in Trigg, Lyon, and Livingston Counties.

(a) Closed areas. Refuge areas shall be closed to all hunting, fishing, boating and molesting

of all species listed in this regulation during the dates designated in this subsection and on signs posted along the boundaries. Refuges and closing dates are as follows: November 1 through February 15 within an area including a row of islands on the west side of the main channel as marked by buoys and signs between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light), excluding Taylor and Jake Fork Bays as marked by buoys and signs. Within the refuge area, that area west of a line from the north point of the mouth of Fulton Bay to the south point of the mouth of Honker Bay will remain closed until March 15 as marked by buoys and signs. Boating is allowed but hunting is prohibited within 200 yards of the area surrounded by a levee and located between river mile 68.4 and river mile 70.4 during the period October 15 through March 15.

(b) Blinds. Permanent blinds shall remain within ten (10) yards of the assigned numbered blind marker within the two (2) areas described as follows:

1. Beginning at the mouth of Donaldson Creek and proceeding south along the east side of the old Cumberland River channel as marked by buoys, to a point due west of the boat ramp at Linton, then east to the Linton boat ramp, then north along the east shore of Barkley Lake to the mouth of Donaldson Creek;

2. Beginning at the Pryor's Creek Light extending south along the western shore of Barkley Lake to the boat ramp at the end of Land Between the Lakes Road 204 thence to the west side of the Cumberland River Channel, marked with buoys, to river mile 73.5, thence north along the west side of the Cumberland River channel, marked with buoys, to the Pryor Creek Light. All other blinds within this described area shall be temporary.

(5) Sloughs Wildlife Management Area located in Henderson and Union Counties.

(a) Grassy Pond-Powell's Lake Unit. Hunting is permitted only from permanent blinds constructed by the department. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(b) Jenny Hole-Highland Creek Unit. Hunting shall be allowed from permanent blinds constructed by the department and at any other above ground site provided there is a minimum of 200 yards between hunters or hunting parties. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(c) Shooting hours: one-half (1/2) hour before sunrise to 2 p.m.

(d) When the Ohio River reaches a level that requires boat access to the units, hunting shall be allowed from boats spaced 200 yards apart, without regard to the department blinds.

(e) Sauerheber Unit. On the Crenshaw and [old] Duncan Tracts - waterfowl hunting shall be allowed only on Thursdays through Sundays and from permanent blinds constructed by the department. Use of the constructed blinds shall be by drawing unless the person(s) drawn do not occupy the blind by the opening of legal shooting hours. The remainder of the Sauerheber Unit, including the Wood Tract, located between mile marker 4 and 6 on state road 268 and bounded by the Ohio River on the north and Tram Road on the east is closed to all hunting, fishing, boating and trespassing between October 15 and March 15.

(6) Ohio River Waterfowl Refuge located in

Livingston County shall be closed to all hunting [and molesting of all species listed in this regulation] from October 15 through March 15. This area includes the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing the river at approximately river mile 911.5 and including Stewart Island.

(7) Hunting of all species listed in this regulation is not permitted on the following areas:

(a) Ohio River in the vicinity of the Ballard Wildlife Management Area located in Ballard County, from a point fifty (50) yards upstream from Dam 53, downstream to a point fifty (50) yards below the downstream boundary of the Ballard Wildlife Management Area.

(b) All portions of Grayson Lake Wildlife Management Area located in Carter and Elliott Counties, except the following:

1. That portion west of route 1496 and east of the boundary delineated by the following: Bruin Creek to the Bruin Creek Fork of Grayson Lake, the Bruin Creek Fork, the mainstem of Grayson Lake north of the Bruin Creek Fork;

2. Grayson Lake north of Rosedale Point;

3. Grayson Lake within fifty (50) yards of the state park shoreline. [That portion of the Grayson Lake Wildlife Management Area located in Carter and Elliott Counties, which lies east of the Little Sandy River and on Bruin Creek portions of Grayson Lake.]

(c) Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties.

(d) Cane Creek Wildlife Management Area located in Laurel County.

(e) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties.

(f) Redbird Wildlife Management Area located in Leslie and Clay Counties.

(g) Mill Creek Wildlife Management Area located in Jackson County.

(h) Beech Creek Wildlife Management Area located in Clay County.

(8) Bath, Rowan, Menifee and Morgan Counties, including Cave Run Lake, are closed to goose hunting. Breech and muzzle-loading shotguns may be used for duck hunting along the shore line portion of Cave Run Lake bordering the Pioneer Weapons Wildlife Management Area.

(9) Ohio County south of Rough River, Muhlenburg County, except for the portion south of U.S. Highway 62 and west of State Route 181, Butler County west of State Route 79, Hopkins County north of State Route 70, south of U.S. Highway 41A and east of State Route 614 and State Route 109, Bell County south of Route 119 and east of Route 25E, Pulaski and McCreary Counties east of U.S. Highway 27 and Laurel, Clay, Whitley, Perry, Knott and Breathitt Counties are closed to goose hunting. [Ohio County south of Rough River, Muhlenburg County east of state route 181, Butler County west of state route 79, Pulaski and McCreary Counties east of U.S. Highway 27 and Laurel, Whitley, Perry, Knott and Breathitt Counties are closed to goose hunting.]

(10) Yellowbank Wildlife Management Area in Breckinridge County. A twenty-five (25) acre wetland designated by signs and painted boundary markers is closed to the public from October 15 through March 15.

(11) Blind restrictions for Barkley Lake, Barren Lake, Green River Lake, Nolin River Lake, Rough River Lake, Buckhorn Lake and Taylorsville

Lake Wildlife Management Areas.

(a) Permanent blinds shall be registered on a permit issued by the U.S. Army Corps of Engineers. Applicants may designate one (1) other person as a partner for registration. No more than two (2) nontransferable permits shall be issued for each permanent blind. Only one (1) permit shall be issued per hunter per area. Permittees who have not constructed a blind at the designated location by November 20 shall forfeit their permit.

(b) Blinds not occupied by permittees by the opening of shooting hours of any day shall be available for use by other hunters on a first come - first served basis for the remainder of that day.

(c) Permittees shall not lock blinds so as to prevent use by other hunters in the absence of the permittee.

(d) Permanent blinds shall be removed within thirty (30) days of the close of waterfowl season unless extension of that period is approved.

(e) Permittees shall be selected by drawing at Barkley Lake, Barren Lake, Green River Lake, and Taylorsville Lake Wildlife Management Areas. Applicants for blind permits shall present a current Kentucky hunting license to the registration clerk at the time of the drawing. Sites which become available by forfeiture shall be assigned to another applicant according to the following procedure: five (5) additional names shall be drawn at each area (or the number of remaining names if less than five (5) are present) and any forfeited blinds shall be assigned to those people in the order they were drawn.

(12) White City Wildlife Management Area located in Hopkins County. Waterfowl shooting hours are from one-half (1/2) hour before sunrise to 2 p.m.

(13) Taylorsville Lake Wildlife Management Area, located in Anderson and Spencer Counties. That portion east of Van Buren Boat Ramp as marked by buoys and signs is closed to all hunting, fishing, boating, and trespassing during the period from November 24 through March 1.

(14) Fulton County shall remain open to Canada goose hunting through February 9, unless closed prior to this date under the provisions of Section 2 of this regulation.

Section 9. Ballard and Henderson-Union Reporting Area Waterfowl Hunting Permit Requirements. It is unlawful for any person to hunt waterfowl within the Ballard or Henderson-Union Reporting Areas without first obtaining the appropriate waterfowl hunting permit or waterfowl harvest register forms as specified in subsections (1), (2) and (3) of this section.

(1) Commercial waterfowl hunting areas.

(a) A commercial waterfowl hunting area permit issued by the department shall be obtained by any person operating a commercial waterfowl hunting area. An annual fee shall be charged for each commercial waterfowl hunting area permit. These permits shall expire at the end of waterfowl hunting season.

(b) Persons operating more than one (1) commercial waterfowl hunting area shall obtain a permit for each individual area. A land holding divided by a public road may be operated as a commercial waterfowl hunting area under one (1)

permit. Whenever a farm unit is divided by land owned by others, a separate permit shall be required for each tract of land operated as a commercial waterfowl hunting area.

(2) Noncommercial waterfowl hunting areas.

(a) Any person controlling the waterfowl hunting rights and privileges on a noncommercial waterfowl hunting area shall obtain a free migratory goose hunting area permit which shall expire at the end of waterfowl hunting season.

(b) The holder of a free migratory goose hunting area permit may be the landowner, his tenant or any person to whom these individuals have assigned exclusive control of goose hunting rights or privileges, in writing, on forms provided by the department.

(c) The permittee shall display the permit openly on the property for which it was issued and provide the permit for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Ohio and Mississippi River waterfowl hunters. Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall carry on their person a waterfowl harvest register form provided by the department. When hunting in a party, one (1) hunter of the party may possess the goose harvest reporting form provided the names of all members of the party are written on the form.

(4) Obtaining permits and harvest reporting forms.

(a) Persons desiring commercial waterfowl hunting area permits, migratory goose hunting area permits, or a season supply of waterfowl harvest register forms for the Ballard Reporting Area may apply by writing to the Ballard County Wildlife Management Area, Route 1, LaCenter, Kentucky 42056, and for the Henderson-Union Reporting Area shall [may] apply by writing to the Sloughs Wildlife Management Area, RR 2, Box 183A, Corydon, Kentucky 42406.

(b) Waterfowl harvest register forms for either reporting area are also available from conservation officers in each area and from the Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

Section 10. Ballard and Henderson-Union Reporting Area Recordkeeping and Reporting Requirements. (1) Commercial waterfowl hunting area permit holders.

(a) The permittee shall maintain and keep an accurate and complete daily hunter register and waterfowl harvest record in duplicate on the hunting area on forms provided by the department.

(b) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Sunday [and Wednesday] and mail or take the original of the completed daily register and waterfowl harvest record form on the [each] subsequent Monday [and Thursday] to the address indicated on the form. The permittee shall hold duplicate copies of these completed forms at the place of registration and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(c) A permittee is responsible for any violation of permit requirements or violations of other regulations committed on the premises under permit unless he immediately reports such

violations to a conservation officer.

(2) Migratory goose hunting area permit holders.

(a) At all times during the waterfowl season, the permittee shall make available on the premises under permit the daily hunter registration forms as provided by the department.

(b) The permittee shall require all waterfowl hunters to enter their names and the date on the register and report form prior to each time they hunt on any permit area and to record, prior to leaving the permitted premises, the numbers and kinds of geese taken.

(c) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Sunday [and Wednesday] and mail or take the original of the completed daily register and waterfowl harvest record form on the [each] subsequent Monday [and Thursday] to the address indicated on the form. The permittee shall hold duplicate copies of the forms for a period of two (2) months after the end of the waterfowl season and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Hunter requirements.

(a) Persons hunting waterfowl on commercial or noncommercial waterfowl hunting areas in the Ballard or Henderson-Union Reporting Areas shall:

1. Prior to hunting, enter their name, address, and the date of the hunt on the daily register form made available by the waterfowl hunting area operator.

2. Before leaving the premises, enter on the waterfowl harvest register form the numbers and kinds of geese taken.

(b) Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall:

1. Prior to hunting, enter on the waterfowl harvest register form their name and address, or the names and addresses of all hunting party members if only one (1) hunter is carrying the form for the party, and the date.

2. At the end of each day's hunting, enter on the waterfowl harvest register form the number and kinds of geese taken.

3. No later than Monday [and Thursday] of each week, mail or take the completed original of the waterfowl harvest register to the address indicated on the form.

Section 11. General Rules Concerning Waterfowl Hunting in the Ballard Reporting Area. (1) It is unlawful to hunt waterfowl except from a blind, unless waterfowl hunting is conducted in flooded, standing timber.

(2) It is unlawful to establish or use any blind [for the hunting of waterfowl] within 100 yards of any other blind.

(3) It is unlawful to establish or locate any blind within fifty (50) yards of any property line.

(4) No more than five (5) persons shall [may] occupy a single blind at the same time.

(5) A hunter shall [may] possess only one (1) shotgun while occupying a blind.

Section 12. Waterfowl Stamp Requirements. Individuals hunting waterfowl shall possess appropriate state and federal waterfowl stamps as stipulated in KRS 150.330 and 150.603.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman

APPROVED BY AGENCY: October 12, 1989

FILED WITH LRC: October 12, 1989 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1989 at 10 a.m. at the Kentucky Department of Fish and Wildlife, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky in the commission room. Individuals interested in attending this hearing shall notify this agency in writing by November 17, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lauren E. Schaaf, Director, Wildlife Division, Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: Approximately 14,000 persons will participate in the migratory bird hunting proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp, and a state duck stamp. Approximately 25 commercial waterfowl hunting area operators will be required to purchase a permit. Indirect costs are determined by the individual hunter, depending upon his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license (\$8.50 for residents) unless exempted by statute, a \$10 migratory bird hunting and conservation stamp, and a \$5.25 state duck stamp. Commercial waterfowl hunting operators will be required to purchase a \$40 permit each.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Approximately 7,500 waterfowl hunters within the Ballard and Henderson-Union reporting areas will be required to register prior to hunting waterfowl and to report their harvest on forms provided by the department. The reporting frequency will be only half of what it has been due to a change requiring weekly rather than biweekly reporting.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, report monitoring and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation and administering the harvest registration zones.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is \$275,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Monitoring of harvest on registration forms will involve tabulation of forms submitted in the Ballard and Henderson-Union reporting areas. Permits will be issued to approximately 500 individuals and landowners.

(3) Assessment of anticipated effect on state and local revenues: Approximately 14,000 waterfowl hunters may be expected to expend money for equipment, transportation, food and lodging. The average annual expenditure for these items is \$110 per migratory bird hunter according to the National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds occur through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that the involved species populations are at levels which can sustain a regulated harvest by Kentucky sportsmen. The regulated hunting alternative selected is that which will provide the most opportunity to Kentucky waterfowl hunters while affording necessary protection to the waterfowl resource.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 54, No. 180, Tuesday, September 19, 1989.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 30 day season between October 7, 1989 and January 7, 1990. Season may be split into more than 2 segments. The daily bag limit of ducks is 3 and may include not more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 2 wood ducks, 1 redhead, and 1 pintail of either sex.

There is a point system option in which hen mallard, black duck, pintail, redhead and hooded merganser are 100 point birds, mallard drake and wood duck are 50 point birds and all other species of ducks and mergansers are 35 points. The possession limit shall be twice the daily bag. The season on canvasbacks is closed. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (of which only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit, except when the point system is chosen. Then mergansers are part of the point system.

Sora and Virginia rails, common moorhens and purple gallinules: Season shall not exceed 70 days between September 1, 1989 and January 20, 1990, with the option to split into two segments. The daily bag limit for rails shall be 25 with the possession limit also being 25, singly or in the aggregate of the two species. The daily limit for common moorhens and purple gallinules shall be 15 with the possession limit being twice the daily bag, singly or in the aggregate of the two species.

Geese: Western zone season may extend for 70 days between October 1, 1989 and January 31, 1990, or until the harvest of 31,000 birds is taken, whichever occurs first. The daily bag limit shall be 5 geese, to include no more than 2 white-fronted geese.

Eastern zone season may extend for 70 days between October 1, 1989 and January 31, 1990. The daily bag limit shall be 2 Canada geese with the possession limit being 4.

Shooting hours shall be one-half hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1989 and March 10, 1990 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Shooting hours for geese in the Ballard Reporting Area is from sunrise to 3 p.m. in order to allow birds to feed off of refuge areas and facilitate wider harvest patterns. This will also allow birds from adjoining states to enter Kentucky from their refuges and utilize our refuges undisturbed and allowing hunters a chance to harvest them on the succeeding day or days if they stay.

The goose season in the Western Zone runs for 61 rather than 70 days due to the paucity of birds utilizing Kentucky during early parts of the framework. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky. The Ballard Wildlife Area season is for 41 days or 20 days shorter than the Western zone so that the controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns. Goose bag limits during December are 2 daily with 4 in possession rather than the 3 daily and 4 in possession allowable by the federal frameworks.

By allowing the maximum number of birds to be taken only during January, hunting pressure will be exerted in the greatest amounts when the birds are present in the greatest numbers. The split is a protective measure to encourage usage of Kentucky's habitats by the greatest number of birds.

Rail, common moorhen and purple gallinule seasons are 59 days in length in order to coordinate opening with the duck, coot, merganser and goose seasons and extend them to the end of the allowable federal framework.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides? Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures beyond those necessary to enforce laws.

TOURISM CABINET

Department of Fish & Wildlife Resources (Proposed Amendment)

301 KAR 3:080. Prohibition of lead shot for waterfowl and dove hunting.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.360, 150.600

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: When eaten by waterfowl and other migratory birds, spent lead shotgun pellets may have a toxic effect. This regulation is necessary to protect waterfowl, and the birds of prey which feed upon waterfowl, from lead poisoning due to the ingestion of lead shot. The function of this regulation is to specify those areas in which lead shot is prohibited for the taking of waterfowl and doves. The purpose of this amendment is to add areas to the steel shot zone.

Section 1. Prohibition of Lead Shot for Waterfowl Hunting. Lead shot is prohibited for the taking of ducks, geese, coots and mergansers in the steel shot zone [Western Zone]. This zone consists of the area west of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, northeast on I-24 to the Lyon County line, then on a line including all of Lyon, Caldwell and Hopkins Counties to Fredonia, north from Fredonia on U.S. 641 to U.S. 60, north on U.S. 60 to the Union County line, northeast along the Union County line to U.S. 60 junction, north on U.S. 60 to U.S. 41

and then north on U.S. 41 to the Kentucky-Indiana border. [east on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to U.S. 41 and then north on U.S. 41 to the Kentucky-Indiana border.]

Section 2. Prohibition of Lead Shot for Dove Hunting. Lead shot is prohibited for the taking of doves on the Ballard, Swan Lake, Peal, Sloughs, Ohio River Islands, Duck Island and Kaler Bottoms Wildlife Management Areas.

Section 3. Possession of Lead Shot Shells. Persons hunting waterfowl in the steel shot zone [Western Zone] or hunting doves on the wildlife management areas listed in Section 2 of this regulation shall not possess lead shot shells.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GOODY, Chairman

APPROVED BY AGENCY: October 12, 1989

FILED WITH LRC: October 12, 1989 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 22, 1989 at 2 p.m. at the Kentucky Department of Fish and Wildlife, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky in the commission room. Individuals interested in attending this hearing shall notify this agency in writing by November 17, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Lauren E. Schaaf, Director, Wildlife Division, Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: There will be approximately 600 waterfowl hunters in Hopkins, Lyon and Caldwell Counties impacted by this regulation. An additional 100 dove hunters who utilize the Ohio River Islands and Duck Island wildlife management areas will be impacted.

(a) Direct and indirect costs or savings to those affected:

1. First year: For waterfowl hunters, the cost of steel shot versus lead shot is approximately \$1-2 dollars higher per box. Dove loads may be slightly higher. There are no additional costs incurred by those affected.

2. Continuing costs or savings: None. Cost of steel shot will equilibrate with lead when production costs are amortized.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative

body: Additional law enforcement efforts will be required.

(a) Direct and indirect costs or savings: None additional.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Slight increase of revenue into local economy.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None. This is a federally mandated action.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Federal Register, Vol. 54, No. 70, Thursday, April 13, 1989, pages 14814-14821.

2. State compliance standards. Same as above.

3. Minimum or uniform standards contained in the federal mandate. Require use of nontoxic steel shot in Kentucky's Western waterfowl zone, which is that area of western Kentucky west of an eastern boundary described by the lines and/or roads as follows: The Purchase Parkway from Fulton, Kentucky, on the Kentucky-Tennessee border northeast to the Interstate-24 - Purchase Parkway Junction; northeast on I-24 to the Lyon County line; then on a line including all of Lyon, Caldwell and Hopkins Counties to Fredonia; north from Fredonia on US 60 to the Union County line; northeast and north along the Union County line to the Union County line - US 60 junction; north on US 60 to the US 60 - US 41 junction and north on US 41 to the Indiana-Kentucky border near Henderson, Kentucky.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate requires use of steel shot for waterfowl hunting in the zone described above. Since dove hunting occurs on some state-owned wildlife areas, the requirement for use of steel shot is extended to dove hunters on those wildlife areas where both dove and waterfowl hunting occurs.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. To do otherwise would result in a huge contradiction of necessity as spent lead shot, regardless of what it is fired at, has the same potential toxicity if it is ingested by waterfowl.

**NATURAL RESOURCES & ENVIRONMENTAL
PROTECTION CABINET**
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:026. Classification of waters.

RELATES TO: KRS Chapter 224[.020, 224.060]

STATUTORY AUTHORITY: KRS 224.020, 224.033,
224.037, 224.060, 33 U.S.C. 1313 [(17)]

NECESSITY AND FUNCTION: This regulation applies the use classifications found in [Sections 4, 5, 6, and 7 of] 401 KAR 5:031 to the surface waters of the Commonwealth. This regulation also makes all surface waters subject to the general criteria specified in Section 2 of 401 KAR 5:031. Definitions for terms used in this regulation are found in 401 KAR 5:029.

Section 1. Classification to Designated Uses. Surface waters classified under this regulation shall be designated for all legitimate uses listed in KRS 224.020(1) except as specified in 401 KAR 5:031, Section 5 or [.] until reclassified in accordance with the procedures of this regulation. Classified waters shall meet all criteria applicable to their designated uses and those criteria listed in Section 2 of 401 KAR 5:031, unless [, the criteria which are indicated for these classifications shall be applicable in all cases unless otherwise ordered by] the cabinet grants an exception pursuant to 401 KAR 5:031, Section 8. Outstanding resource waters may have unique water quality characteristics which shall be maintained by additional criteria adopted by the cabinet pursuant to 401 KAR 5:031, Section 7.

Section 2. Reclassification. (1) Surface [The reclassification of] waters may be reclassified [of the Commonwealth which establishes a different classification than is established under this regulation shall be adopted] only upon affirmative findings by the cabinet pursuant to Sections 5 and 6 of this regulation. Before reclassifying any surface water [Prior to adding or removing any use], the cabinet shall provide notice and an opportunity for a public hearing.

(2) In reclassifying any surface water [body], the cabinet shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream surface waters.

(3) A use shall not be removed for a surface water [body] if that use is an existing use [currently being attained], or if the [such] use may [s will] be attained by implementing effluent limitations required under 401 KAR 5:035, [and] 401 KAR 5:045, 401 KAR 5:065 or 401 KAR 5:080 or [and] by implementing cost-effective and reasonable best management practices for nonpoint source control.

(4) If a surface water [body] is designated for a [more stringent] use that [than] is not an existing use [currently being attained], the cabinet shall reclassify the surface water [body] upon demonstration that the designated use is unattainable due to natural background or [.] irretrievable person-induced conditions; or because [that] existing ["point"] sources would have to be controlled beyond the most stringent effluent limitation levels required for such sources under 401 KAR 5:035, [and] 401

KAR 5:045, 401 KAR 5:065, or 401 KAR 5:080 and imposition of these [such] extra controls would result in substantial and widespread economic and social impact.

(5) Reclassifications [Implementation of this section] will be consistent with the nondegradation requirements of 401 KAR 5:029, Section 2.

Section 3. Priority for Implementation. [Except as provided in subsection (4) of this section, the] Priorities for reclassification of the surface waters of the Commonwealth are:

(1) Surface waters receiving [(or proposed to receive)] discharges from a POTW [publicly-owned treatment works and/] or serving as public water system [supply] sources have first priority in the following order [in the following order of priority]:

(a) Any local unit of government with a pending [public] construction permit application for installation or upgrading of a POTW [sewage treatment plant and/] or public water system treatment plant.

(b) Any local unit[s] of government in the cabinet's [201] construction grants program administered pursuant to 33 U.S.C. 1281 for installation or upgrading of a POTW [sewage treatment plant,] in an order of priority consistent with its [their] priority project list rank.

(c) Any local unit[s] of government which requests consideration prior to [their] entering its [into either their] own construction project, applying for an [a] NPDES or KPDES permit [action], or applying for participation in the cabinet's [the 201] construction grants program administered pursuant to 33 U.S.C. 1281 for installation or upgrading of a POTW [sewage treatment plant].

(d) Other local units of government, on a first-come, first-served basis.

(2) Surface waters receiving [(or proposed to receive)] discharges from any other [(private or semipublic)] treatment works shall have second priority in the following order [of priority]:

(a) Applicants for new or modified NPDES or KPDES permits for discharges [applicants or proposed NPDES or KPDES permit modifications] to surface waters [waterways] which may potentially be classified for [a beneficial use of] cold-water aquatic habitat.

(b) All other surface waters [segments] with point source dischargers [private or semipublic facilities,] on a first-come, first served basis.

(3) Reclassifications for all other surface waters which do not have any existing or proposed point source dischargers have third priority.

(4) These priorities may be varied by order of the cabinet [in a particular case pursuant to an administrative hearing].

Section 4. Responsibility for Providing Documentation. The following entities are responsible for providing the documentation for the reclassification of the surface waters under this regulation. The required documentation is listed [outlined] in Section 5 of this regulation.

(1) The cabinet will [shall] provide supporting documentation for the reclassification of surface waters on which are located [(or proposed to be located)]

facilities which are either:

- (a) POTWs [Publicly-owned treatment works]; or
- (b) Outstanding resource waters on publicly owned land; or
- (c) Applicants for new or modified NPDES or KPDES permits [applicants or proposed NPDES or KPDES permit modifications] for discharges to surface waters which may potentially be classified as [for a beneficial use of] outstanding resource waters.

(2) Any applicant filing for reclassification of surface waters in circumvention of the priority system contained in Section 3 of this regulation shall provide the cabinet with classification documentation [for waters on which discharges from private or semipublic treatment works are located (or proposed to be located). In these cases] The applicant has [sustains] the burden of proof that the reclassification is appropriate and necessary.

(3) The cabinet will [shall] provide documentation for all other surface waters which do not have any existing or proposed point source dischargers.

Section 5. Required Documentation. [This section outlines the] Documentation which shall be required to support the reclassification of a surface water of the Commonwealth is as follows:

(1) A United State Geological Survey [USGS] 7.5 minute topographic map [will be prepared] showing those surface waters [or stream segments] to be reclassified with [.] a description consisting of a river mile index with any existing and proposed discharge points;

(2) Existing uses and water quality data for the surface [proposed] waters [or stream segments] for which the reclassification is proposed. Where adequate data are unavailable, additional studies may be required by the cabinet;

(3) Descriptions of general land uses (e.g., mining, agricultural, recreation, low, medium, and high density residential commercial-industrial, etc.) and [as well as] specific land uses adjacent to the surface waters [for the length of the segment] for which the reclassification is proposed;

(4) The existing and designated uses of the downstream [receiving] waters into which the surface water [segment] under consideration discharges [and the downstream uses of those receiving waters];

(5) General physical characteristics of the surface water [stream segment] including, but not limited to width, depth, bottom composition, and slope;

(6) The frequency of occasions when there is no natural flow in the surface water and the 7Q10 and harmonic mean flow values for the surface water and [segment, the low flow in the segment and low flow in] adjacent surface waters; [segments.]

(7) An assessment of the existing and potential aquatic life habitat in the surface waters [stream segment] under consideration and the adjacent upstream surface waters [segment]. The existing aquatic life shall [in the area must] be documented and [as well as an assessment of] livestock and natural wildlife dependence on [upon] the surface water shall be assessed [stream segment]. The occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota shall [must] be documented;

(8) The [existing and] proposed designated uses for the surface water [stream segment(s)] in question; and

(9) [Information must be supplied pursuant to Section 2 of this regulation, specifically:

(a)] An explanation of the irretrievable person-induced, or natural conditions which preclude attainment of a higher use designation[;] or

[(b)] an assessment of the substantial and widespread social and economic impacts resulting from the imposition of additional controls necessary for existing point sources, beyond the most stringent effluent limitation levels normally required for such sources.

Section 6. Procedures for Reclassification. This section outlines the procedures for evaluating proposed [by which] use reclassifications [will be assigned. Procedures for reclassification of a water of the Commonwealth shall be initiated and considered in the order of priority specified in Section 3 of this regulation].

(1) For each of the surface waters for which a reclassification is proposed, the cabinet or applicant [as defined in Section 4(2) of this regulation,] shall prepare a fact sheet containing, but not limited to, the following information:

(a) The name and address of the applicant;

(b) The name and sketch or description of the surface water proposed for specified use reclassifications, including the location of existing and proposed dischargers;

(c) The proposed use classifications;

(d) A brief abstract of the supportive documentation which demonstrates that the [said] reclassification is appropriate;

(e) The appropriate water quality criteria for the surface water [segment(s)] based on the proposed designated use(s);

(f) The treatment requirements proposed for discharges to the surface water in question if designated for the proposed use(s);

(g) A "plain English" summary of the implications of such designation for the community and other users or potential users of the surface water in question;

(h) The procedure by which the designation will be made.

(2) Based upon all available information, the staff shall make its recommendation of use classifications of the surface waters in question to the secretary of the cabinet.

(3) The secretary shall have [cause to be prepared] a list of surface waters [segments] and their classification prepared to be published as an administrative regulation.

(4) Upon completing [the review period and] the procedure for promulgation of [under] administrative regulations set forth in KRS Chapter 13A [rule making], all designated surface waters and their use classifications shall be listed in [Section 7 of] this regulation.

Section 7. Surface Water [Stream] Use Classifications. (1) Listed in the tables below are the use classifications for specific surface waters of the Commonwealth. The county column indicates the county in which the mouth or outlet of the surface water [stream] is located. The identifying symbols for use classifications are as follows:

WAH - Warm Water Aquatic Habitat
CAH - Cold Water Aquatic Habitat
PCR - Primary Contact Recreation
SCR - Secondary Contact Recreation
DWS - Domestic Water Supply (applicable at existing points of public water supply withdrawal)
ORW - Outstanding Resource Water

(2) Surface waters not specifically listed in this section are designated for the use of warm water aquatic habitat, primarily contact

recreation, secondary contact recreation and domestic water supply in accordance with Section 1 of this regulation.

(3) Exceptions to specific criteria [listed to protect use classifications] in 401 KAR 5:031 which apply to particular surface waters are shown in the tables of surface water [stream] use classifications in this section. All other criteria in 401 KAR 5:031 applicable to the listed use classifications [also] apply to these surface waters [streams].

(See table on following pages)

LIST OF DESIGNATED SURFACE WATER USE CLASSIFICATIONS

Stream	Zone	County	Use Classification	Exceptions to Specific Criteria
BIG SANDY RIVER BASIN				
<u>Big Sandy River</u>	<u>River Mile 26.8 to Ohio River</u>	<u>Boyd</u>	<u>WAH, PCR, SCR</u>	
Hood Creek	Source to Wheeler Branch	Lawrence	<u>WAH [CAH], PCR, SCR</u>	
<u>Levisa Fork</u> <u>Big Sandy River</u>	<u>Kentucky-Virginia State Line</u> <u>River Mile 147.5 (Head-</u> <u>waters of Fishtrap Lake)</u>	<u>Pike</u>	<u>WAH, PCR, SCR, DWS</u>	
<u>Levisa Fork</u> <u>Big Sandy River</u>	<u>Fishtrap Lake Dam to Big</u> <u>Sandy River</u>	<u>Lawrence</u>	<u>WAH, PCR, SCR, DWS</u>	
<u>Russell Fork</u> <u>Big Sandy River</u>	<u>Kentucky-Virginia State Line</u> <u>(River Mile 15.9) to</u> <u>Levisa Fork</u>	<u>Pike</u>	<u>WAH, PCR, SCR, DWS</u>	
<u>Tug Fork</u> <u>Big Sandy River</u>	<u>Kentucky-Virginia State Line</u> <u>(River Mile 94.0) to Big</u> <u>Sandy River</u>	<u>Lawrence</u>	<u>WAH, PCR, SCR, DWS</u>	
<u>Lakes/Reservoirs</u>				
<u>Dewey</u>	<u>Entire reservoir</u>	<u>Floyd</u>	<u>WAH, PCR, SCR, DWS</u>	
<u>Fishtrap</u>	<u>Entire reservoir</u>	<u>Pike</u>	<u>WAH, PCR, SCR, DWS</u>	
<u>Paintsville</u>	<u>Entire reservoir</u>	<u>Johnson</u>	<u>WAH, CAH, PCR, SCR</u>	
LITTLE SANDY RIVER BASIN				
Big Caney Creek	Source to Grayson Lake	Elliott	CAH, PCR, SCR	
<u>Big Sinking Creek</u>	<u>River Mile 6.0 to Little</u> <u>Sandy River</u>	<u>Carter</u>	<u>CAH, PCR, SCR</u>	
Laurel Creek	Source to Little Sandy River	Elliott	CAH, PCR, SCR	
<u>Little Sandy River</u>	<u>Source to River Mile 71.1</u> <u>(Headwaters of Grayson</u> <u>Lake)</u>	<u>Elliott</u>	<u>WAH, PCR, SCR, DWS</u>	
<u>Little Sandy River</u>	<u>River Mile 50.0 (Grayson</u> <u>Lake Dam) to Ohio River</u>	<u>Greenup</u>	<u>WAH, PCR, SCR, DWS</u>	
<u>Lakes/Reservoirs</u>				
<u>Grayson</u>	<u>Entire Reservoir</u>	<u>Carter</u>	<u>WAH, PCR, SCR</u>	
<u>Greenbo</u>	<u>Entire Reservoir</u>	<u>Greenup</u>	<u>WAH, CAH, PCR, SCR, DWS</u>	
TYGARTS CREEK BASIN				
Buffalo Creek	Source to Tygarts Creek	Carter	WAH, PCR, SCR	
Little White Oak Creek	Source to Tygarts Creek	Greenup	WAH, PCR, SCR	
Tygarts Creek	Source to Ohio River	Greenup	WAH, PCR, SCR, DWS	
<u>White Oak Creek</u>	<u>Source to Tygarts Creek</u>	<u>Greenup</u>	<u>WAH, PCR, SCR</u>	
LICKING RIVER BASIN				
<u>Burning Fork</u>	<u>Basin</u>	<u>Magoffin</u>	<u>WAH, PCR, SCR</u>	
Craney Creek	Source to North Fork Licking River	Rowan/Morgan	CAH, PCR, SCR	

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Fleming Creek	Source to Licking River	Nicholas	WAH, PCR, SCR
<u>Licking River</u>	<u>River Mile 169.6 to Ohio River</u>	<u>Kenton/Campbell</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Licking River</u>	<u>River Mile 176.8 (Cave Run Lake Dam) to River Mile 169.6 (U.S. Highway 60 Bridge)</u>	<u>Bath/Rowan</u>	<u>CAH, PCR, SCR, DWS</u>
<u>Licking River</u>	<u>Source to River Mile 218.2 (Headwaters of Cave Run Lake)</u>	<u>Morgan</u>	<u>WAH, PCR, SCR, DWS</u>
<u>North Fork Licking River</u>	<u>Source to Licking River</u>	<u>Pendleton/Bracken</u>	<u>WAH, PCR, SCR, DWS</u>
Slate Creek	Source to Licking River	Bath	WAH, PCR, SCR, DWS
<u>South Fork Licking River</u>	<u>River Mile 65.1 to Licking River</u>	<u>Pendleton</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Lakes/Reservoirs</u>			
<u>Cave Run</u>	<u>Entire Reservoir</u>	<u>Rowan/Bath</u>	<u>WAH, PCR, SCR</u>

KENTUCKY RIVER BASIN

<u>Bailey Run</u>	<u>Basin</u>	<u>Anderson</u>	<u>WAH, PCR, SCR</u>
<u>Buck Lick Branch</u>	<u>Basin</u>	<u>Lee</u>	<u>WAH, PCR, SCR</u>
<u>Cedar Brook</u>	<u>Basin</u>	<u>Anderson</u>	<u>WAH, PCR, SCR</u>
Chimney Top Creek	Basin	Wolfe	CAH, PCR, SCR
<u>Clarks Run</u>	<u>Source to Herrington Lake</u>	<u>Boyle</u>	<u>WAH, PCR, SCR</u>
<u>Dix River</u>	<u>Herrington Lake Dam to Kentucky River</u>	<u>Garrard/Mercer</u>	<u>CAH, PCR, SCR</u>
<u>Dix River</u>	<u>Source to River Mile 33.1 (Headwaters of Herrington Lake)</u>	<u>Boyle/Garrard</u>	<u>WAH, PCR, SCR</u>
East Fork Indian Creek	Source to Indian Creek	Meniffee	CAH, PCR, SCR
Gladie Creek	Basin	Meniffee	CAH, PCR, SCR
<u>Hanging Fork Creek</u>	<u>Source to Dix River</u>	<u>Boyle/Lincoln</u>	<u>WAH, PCR, SCR</u>
<u>Kentucky River</u>	<u>River Mile 254.8 to Ohio River</u>	<u>Carroll</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Middle Fork Kentucky River</u>	<u>Source to River Mile 76.6 (Headwaters of Buckhorn Lake)</u>	<u>Leslie</u>	<u>WAH, PCR, SCR</u>
<u>Middle Fork Kentucky River</u>	<u>River Mile 43.2 (Buckhorn Lake Dam) to North Fork Kentucky River</u>	<u>Lee</u>	<u>WAH, PCR, SCR</u>
Middle Fork Red River	Source to River Mile 10.6	Powell	CAH, PCR, SCR
<u>North Fork Kentucky River</u>	<u>Source to Kentucky River</u>	<u>Lee</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Parched Corn Creek</u>	<u>Source to Red River</u>	<u>Wolfe</u>	<u>CAH, PCR, SCR</u>
<u>Red River</u>	<u>Source to River Mile 68.6</u>	<u>Meniffee/Wolfe</u>	<u>WAH, PCR, SCR</u>
Red River	River Mile 68.6 to River Mile 59.5	Meniffee/Wolfe	WAH, PCR, SCR, ORW

<u>Red River</u>	<u>River Mile 59.5 to Kentucky River</u>	<u>Clark/Estill</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Ross Creek</u>	<u>Source to Kentucky River</u>	<u>Lee</u>	<u>WAH, PCR, SCR</u>
Silver Creek	Source to Kentucky River	Madison	WAH, PCR, SCR
South Fork Elkhorn Creek	Source to North Fork Elkhorn Creek	Franklin	WAH, PCR, SCR
<u>South Fork Kentucky River</u>	<u>Source to Kentucky River</u>	<u>Lee</u>	<u>WAH, PCR, SCR, DWS</u>
Swift Camp Creek	Source to Red River	Wolfe	CAH, PCR, SCR
Town Branch	Source to South Fork Elkhorn Creek	Fayette	WAH, PCR, SCR
<u>Lakes/Reservoirs</u>			
<u>Bert Combs</u>	<u>Entire Reservoir</u>	<u>Clay</u>	<u>WAH, CAH, PCR, SCR, DWS</u>
<u>Buckhorn</u>	<u>Entire Reservoir</u>	<u>Perry</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Carr Fork</u>	<u>Entire Reservoir</u>	<u>Knott/Perry</u>	<u>WAH, PCR, SCR</u>
<u>Fishpond</u>	<u>Entire Reservoir</u>	<u>Letcher</u>	<u>WAH, CAH, PCR, SCR</u>
<u>Herrington</u>	<u>Entire Reservoir</u>	<u>Garrard/Mercer</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Mill Creek</u>	<u>Entire Reservoir</u>	<u>Wolfe</u>	<u>WAH, CAH, PCR, SCR, DWS</u>

SALT RIVER BASIN

Chenoweth Run	Source to Floyds Fork (River Mile 24.3)	Jefferson	WAH, PCR, SCR
Currys Fork	Confluence of South and North Forks to Floyds Fork	Oldham	WAH, PCR, SCR
Floyds Fork	Source to Salt River	Bullitt	WAH, PCR, SCR
Mill Creek	Source to Salt River	Bullitt	WAH, PCR, SCR
North Fork of Currys Fork	Source to South Fork of Currys Fork	Oldham	WAH, PCR, SCR
<u>Salt River</u>	<u>Source to River Mile 74.8 (Headwaters of Taylorsville Lake)</u>	<u>Anderson</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Salt River</u>	<u>River Mile 60.1 (Taylorsville Lake Dam) to Ohio River)</u>	<u>Hardin/Jefferson</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Beech Fork Salt River</u>	<u>Source to Salt River</u>	<u>Hardin/Bullitt</u>	<u>WAH, PCR, SCR</u>
<u>Rolling Fork Salt River</u>	<u>Source to Salt River</u>	<u>Bullitt</u>	<u>WAH, PCR, SCR, DWS</u>
Unnamed tributary to Mill Creek	Source to Mill Creek at River Mile 11.8	Bullitt	WAH, PCR, SCR

Lakes/Reservoirs

<u>Taylorsville</u>	<u>Entire Reservoir</u>	<u>Spencer</u>	<u>WAH, PCR, SCR</u>
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GREEN RIVER BASIN

<u>Barren River</u>	<u>Source to River Mile 118.5 (Headwaters of Barren River Lake)</u>	<u>Allen</u>	<u>WAH, PCR, SCR</u>
<u>Barren River</u>	<u>River Mile 79.1 (Barren River Lake Dam) to River Mile 15.0</u>	<u>Warren</u>	<u>WAH, PCR, SCR, DWS</u>

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<u>Barren River</u>	<u>River Mile 15.0 to Green River</u>	<u>Butler/Warren</u>	<u>WAH, PCR, SCR, ORW</u>
Beaver Dam Creek	Source to Green River	Edmonson	CAH, PCR, SCR
<u>Big Pitman Creek</u>	<u>Source to Green River</u>	<u>Green</u>	<u>WAH, PCR, SCR</u>
Black Lick Creek	Source to Clear Fork	Logan	WAH, PCR, SCR, DWS
<u>Buck Horn Creek</u>	<u>Source to Little Pitman Creek</u>	<u>Taylor</u>	<u>WAH, PCR, SCR</u>
Buffalo Creek	Source to Green River (in Mammoth Cave National Park)	Edmonson	CAH, PCR, SCR
Cypress Creek	Source to Pond River	McLean	WAH, PCR, SCR
<u>Drakes Creek</u>	<u>Confluence of West Fork and Middle Fork to Barren River</u>	<u>Warren</u>	<u>WAH, PCR, SCR</u>
Gasper River	Source to Barren River	Warren	WAH, PCR, SCR
<u>Green River</u>	<u>Source to River Mile 340.1 (Headwaters of Green River Lake)</u>	<u>Adair</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Green River</u>	<u>River Mile 305.6 (Green River Lake Dam) to River Mile 225.9</u>	<u>Hart</u>	<u>WAH, PCR, SCR, DWS</u>
Green River	River Mile 225.9 to River Mile 181.7	Edmonson[/Hart]	WAH, PCR, SCR, ORW
Green River	River Mile 181.7 to River Mile 168.0	<u>Butler/Warren</u> [Edmonson/Warren]	WAH, PCR, SCR, DWS
Green River	River Mile 168.0 to River 148.0	Butler[/Warren]	WAH, PCR, SCR, ORW
Green River	River Mile 148.0 to Ohio River	Henderson	WAH, PCR, SCR, DWS
Lick [Fork] Creek	Source to W. Fork Drakes Creek	Simpson	CAH, PCR, SCR
<u>Little Pitman Creek</u>	<u>Source to Big Pitman Creek</u>	<u>Green</u>	<u>WAH, PCR, SCR</u>
Lynn Camp Creek	Source to Green River	Hart	CAH, PCR, SCR
<u>Middle Pitman Creek</u>	<u>Source to Big Pitman Creek</u>	<u>Green</u>	<u>WAH, PCR, SCR</u>
Underground River System	Mammoth Cave National Park	Edmonson/Hart/ Barren	CAH, PCR, SCR, ORW
	<u>Turnhole Spring Basin</u>	<u>Edmonson/Barren</u>	<u>CAH, PCR, SCR, ORW</u>
	<u>Echo River Basin</u>	<u>Edmonson</u>	<u>CAH, PCR, SCR, ORW</u>
	<u>Pike Spring Basin</u>	<u>Edmonson</u>	<u>CAH, PCR, SCR, ORW</u>
	<u>Mile 205.7 Spring Basin</u>	<u>Hart</u>	<u>CAH, PCR, SCR, ORW</u>
	<u>McCoy Spring Basin</u>	<u>Hart</u>	<u>CAH, PCR, SCR, ORW</u>
	<u>Suds Spring Basin</u>	<u>Hart/Barren</u>	<u>CAH, PCR, SCR, ORW</u>
Mud River	Source to Green River	Butler/Muhlen- burg	WAH, PCR, SCR
<u>Nolin River</u>	<u>Source to River Mile 64.3 (Headwaters of Nolin Lake)</u>	<u>Hart/Grayson</u>	<u>WAH, PCR, SCR</u>

<u>Nolin River</u>	<u>River Mile 7.6 (Nolin Lake Dam) to Green River</u>	<u>Edmonson</u>	<u>CAH, PCR, SCR</u>
<u>Rough River</u>	<u>Source to River Mile 133.8 (Headwaters of Rough River Lake)</u>	<u>Hardin</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Rough River</u>	<u>River Mile 89.3 (Rough River Lake Dam) to River Mile 72.4</u>	<u>Ohio/Grayson</u>	<u>CAH, PCR, SCR, DWS</u>
<u>Rough River</u>	<u>River Mile 72.4 to Green River</u>	<u>McLean/Ohio</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Roundstone Creek</u>	<u>Source to Hwy 1140 (River Mile 3.5)</u>	<u>Hart</u>	<u>CAH, PCR, SCR</u>
<u>Sharp's Branch</u>	<u>Source to West Fork Drakes Creek</u>	<u>Simpson</u>	<u>WAH, PCR, SCR</u>
<u>Trammel Fork</u>	<u>Source to Hwy 31E (River Mile 23.6)</u>	<u>Warren</u>	<u>CAH, PCR, SCR</u>
<u>Trammel Fork</u>	<u>River Mile 23.6 to Drakes Creek</u>	<u>Warren</u>	<u>WAH, PCR, SCR</u>
<u>West Fork Drakes Creek</u>	<u>Source to Confluence with Middle Fork Drakes Creek</u>	<u>Warren</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Wiggington Creek</u>	<u>Source to Gasper River</u>	<u>Logan</u>	<u>WAH, PCR, SCR</u>
<u>Lakes/Reservoirs</u>			
<u>Barren River</u>	<u>Entire Reservoir</u>	<u>Barren/Allen</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Green River</u>	<u>Entire Reservoir</u>	<u>Taylor</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Nolin</u>	<u>Entire Reservoir</u>	<u>Edmonson</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Rough River</u>	<u>Entire Reservoir</u>	<u>Breckinridge/Grayson</u>	<u>WAH, PCR, SCR, DWS</u>

LOWER CUMBERLAND RIVER BASIN

<u>Casey Creek</u>	<u>Source to Little River</u>	<u>Trigg</u>	<u>CAH, PCR, SCR</u>
<u>Skinframe Creek</u>	<u>Source to Livingston Creek</u>	<u>Lyon</u>	<u>CAH, PCR, SCR</u>
<u>Sulphur Spring Creek</u>	<u>Source to Red River</u>	<u>Simpson</u>	<u>CAH, PCR, SCR</u>
<u>Cumberland River</u>	<u>River Mile 30.8 (Lake Barkley Dam) to Ohio River</u>	<u>Livingston</u>	<u>WAH, PCR, SCR, DWS</u>

Lakes/Reservoirs

<u>Barkley</u>	<u>Entire Reservoir to Kentucky/Tennessee State Line (River Mile 74.7)</u>	<u>Lyon/Livingston</u>	<u>WAH, PCR, SCR, DWS</u>
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TENNESSEE RIVER BASIN

<u>Tennessee River</u>	<u>River Mile 14.5 [22.4] to River Mile 0.0</u>	<u>Livingston/McCracken</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Tennessee River</u>	<u>River Mile 22.4 (Kentucky Lake Dam) to River Mile 14.5</u>	<u>Livingston/McCracken</u>	<u>WAH, PCR, SCR, ORW</u>

Lakes/Reservoirs

<u>Kentucky</u>	<u>Entire Reservoir to Kentucky/Tennessee State Line (River Mile 62.4)</u>	<u>Livingston/Marshall</u>	<u>WAH, PCR, SCR, DWS</u>
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TRADEWATER RIVER BASIN

Crab Orchard Creek/ Vaughn Ditch	Source to Tradewater River	Webster	WAH, PCR, SCR
Montgomery Creek	Source to Tradewater River	Caldwell	WAH, PCR, SCR
Tradewater River	Source to Ohio River	Crittenden/ Union	WAH, PCR, SCR

OHIO RIVER BASIN (Main Stem and Minor Tributaries)

<u>Doe Run Creek</u>	<u>Source to KY Hwy 1628 (River Meade Mile 5.15)</u>		<u>CAH, PCR, SCR</u>
<u>Ohio River</u>	<u>Big Sandy River (River Mile 317.1 [664.15]) to River Mile 940.7 [Mississippi River]</u>	<u>McCracken [Ballard]</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Ohio River</u>	<u>River Mile 940.7 to River Mile 943.3</u>	<u>McCracken</u>	<u>WAH, PCR, SCR, DWS, ORW</u>
<u>Ohio River</u>	<u>River Mile 943.3 to River Mile 966.3</u>	<u>McCracken/ Ballard</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Ohio River</u>	<u>River Mile 966.3 to River Mile 969.5</u>	<u>Ballard</u>	<u>WAH, PCR, SCR, DWS, ORW</u>
<u>Ohio River</u>	<u>River Mile 969.5 to Mississippi River</u>	<u>Ballard</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Ohio River</u>	<u>River Mile 922.0 to River mile 923.5 (Channel East of Towhead Island)</u>	<u>Livingston</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Paddy's Run</u>	<u>Source to Ohio River</u>	<u>Jefferson</u>	<u>PCR, SCR</u> <u>Section 2(1)(d) and 2(2) of 401 KAR 5:031 do not apply.</u>

Sinking Creek	Source to Kwy 259 (River Mile 4.0)	Breckinridge	CAH, PCR, SCR
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Lakes/Reservoirs

<u>Metropolis</u>	<u>Entire Lake</u>	<u>McCracken</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Swan</u>	<u>Entire Lake</u>	<u>Ballard</u>	<u>WAH, PCR, SCR, ORW</u>

MISSISSIPPI RIVER BASIN (Mainstem and Minor Tributaries)

<u>Mississippi River</u>	<u>Confluence with Ohio River to Kentucky/Tennessee State Lines</u>	<u>Fulton</u>	<u>WAH, PCR, SCR</u>
<u>Murphy's Pond</u>	<u>Entire Pond</u>	<u>Hickman</u>	<u>WAH, PCR, SCR, ORW</u>

UPPER CUMBERLAND RIVER BASIN

<u>Archers Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Bad Branch</u>	<u>Basin</u>	<u>Letcher</u>	<u>CAH, PCR, SCR, ORW</u>
<u>Bark Camp Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>CAH, PCR, SCR</u>
<u>Beaver Creek</u>	<u>Basin</u>	<u>McCreary</u>	<u>CAH, PCR, SCR, ORW</u>
<u>Beaver Creek</u>	<u>Source to Lake Cumberland</u>	<u>Wayne</u>	<u>WAH, PCR, SCR</u>
<u>Beck's Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Big Lick Branch</u>	<u>Basin</u>	<u>Pulaski</u>	<u>WAH, PCR, SCR, ORW</u>

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<u>Long Branch</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, ORW</u>
Looney Creek	Basin <u>above River Mile 5.3</u>	Harlan	CAH, PCR, SCR
Martin's Fork	Basin above [Hwy 987] River Mile 27.4	Harlan	CAH, PCR, SCR, ORW
Middle Fork, Rock- castle River	River Mile 61.1 to River Mile <u>53.3</u> [41.3]	Jackson	WAH, PCR, SCR, ORW
<u>Mill Creek</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Mill Creek</u>	<u>Basin</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Poor Fork Cumberland River</u>	<u>Basin above River Mile 742.7</u>	<u>Letcher</u>	<u>CAH, PCR, SCR, ORW</u>
Poor Fork Cumberland River	Basin <u>from River Mile 742.7</u> <u>to [above] Jefferson</u> <u>National Forest Boundary</u> <u>(River Mile 720.55)</u>	Letcher	CAH, PCR, SCR
Poor Fork Cumberland	River Mile 720.55 to Clover Fork Cumberland River	Harlan	WAH, PCR, SCR, DWS
Razor Fork	Basin	Harlan	CAH, PCR, SCR
Rock Creek	Tennessee/Kentucky State Line <u>(River Mile 21.9)</u> to White Oak Creek	McCreary	CAH, PCR, SCR, ORW
<u>Rock Creek</u>	<u>Basin from confluence with</u> <u>Jellico Creek</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, ORW</u>
Rockcastle River	River Mile <u>53.3</u> [27.9] to River Mile 8.5	Laurel/ Pulaski	WAH, PCR, SCR, ORW
<u>Ross Branch</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, ORW</u>
Roundstone Creek	Source to <u>River Mile 14.0</u> [Rockcastle River]	Rockcastle	WAH, PCR, SCR[, DWS]
<u>Roundstone Creek</u>	<u>River Mile 14.0 to River</u> <u>Mile 4.7</u>	<u>Rockcastle</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Roundstone Creek</u>	<u>River Mile 4.7 to Rockcastle</u> <u>River</u>	<u>Rockcastle</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Sanders Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, ORW</u>
Shillalah Creek	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR
<u>Shut-in Branch</u>	<u>Basin</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Sims Fork</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Straight Creek</u>	<u>Basin above River Mile 11.3</u>	<u>Harlan</u>	<u>WAH, PCR, SCR, ORW</u>
Sugar Run	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR
<u>Trammell Fork</u>	<u>Basin</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, ORW</u>
Troublesome Creek	Basin	McCreary	CAH, PCR, SCR
<u>White Oak Creek</u>	<u>Basin above River Mile 1.2</u> <u>(includes Little White Oak</u> <u>Creek)</u>	<u>Laurel</u>	<u>CAH, PCR, SCR</u>
<u>Wood Creek</u>	<u>Wood Creek Lake Dam (River</u> <u>Mile 4.0) to Hazel Patch</u> <u>Creek</u>	<u>Laurel</u>	<u>CAH, PCR, SCR</u>

<u>Long Branch</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, ORW</u>
Looney Creek	Basin <u>above River Mile 5.3</u>	Harlan	CAH, PCR, SCR
Martin's Fork	Basin <u>above [Hwy 987] River Mile 27.4</u>	Harlan	CAH, PCR, SCR, ORW
Middle Fork, Rock-castle River	River Mile 61.1 to River Mile <u>53.3 [41.3]</u>	Jackson	WAH, PCR, SCR, ORW
<u>Mill Creek</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Mill Creek</u>	<u>Basin</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Poor Fork Cumberland River</u>	<u>Basin above River Mile 742.7</u>	<u>Letcher</u>	<u>CAH, PCR, SCR, ORW</u>
Poor Fork Cumberland River	Basin <u>from River Mile 742.7 to [above] Jefferson National Forest Boundary (River Mile 720.55)</u>	Letcher	CAH, PCR, SCR
Poor Fork Cumberland	River Mile 720.55 to Clover Fork Cumberland River	Harlan	WAH, PCR, SCR, DWS
Razor Fork	Basin	Harlan	CAH, PCR, SCR
Rock Creek	Tennessee/Kentucky State Line <u>(River Mile 21.9) to White Oak Creek</u>	McCreary	CAH, PCR, SCR, ORW
<u>Rock Creek</u>	<u>Basin from confluence with Jellico Creek</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, ORW</u>
Rockcastle River	River Mile <u>53.3 [27.9] to River Mile 8.5</u>	Laurel/Pulaski	WAH, PCR, SCR, ORW
<u>Ross Branch</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, ORW</u>
Roundstone Creek	Source to <u>River Mile 14.0 [Rockcastle River]</u>	Rockcastle	WAH, PCR, SCR[, DWS]
<u>Roundstone Creek</u>	<u>River Mile 14.0 to River Mile 4.7</u>	<u>Rockcastle</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Roundstone Creek</u>	<u>River Mile 4.7 to Rockcastle River</u>	<u>Rockcastle</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Sanders Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, ORW</u>
Shillalah Creek	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR
<u>Shut-in Branch</u>	<u>Basin</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Sims Fork</u>	<u>Basin</u>	<u>Bell</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Straight Creek</u>	<u>Basin above River Mile 11.3</u>	<u>Harlan</u>	<u>WAH, PCR, SCR, ORW</u>
Sugar Run	Source to Cumberland Gap National Historical Park Boundary	Bell	CAH, PCR, SCR
<u>Trammell Fork</u>	<u>Basin</u>	<u>McCreary</u>	<u>WAH, PCR, SCR, ORW</u>
Troublesome Creek	Basin	McCreary	CAH, PCR, SCR
<u>White Oak Creek</u>	<u>Basin above River Mile 1.2 (includes Little White Oak Creek)</u>	<u>Laurel</u>	<u>CAH, PCR, SCR</u>
<u>Wood Creek</u>	<u>Wood Creek Lake Dam (River Mile 4.0) to Hazel Patch Creek</u>	<u>Laurel</u>	<u>CAH, PCR, SCR</u>

Yellow Creek	Source to Cumberland River	Bell	WAH, PCR, SCR
<u>Youngs Creek</u>	<u>Basin</u>	<u>Whitley</u>	<u>WAH, PCR, SCR, ORW</u>
<u>Lakes/Reservoirs</u>			
<u>Beulah (=Tyner)</u>	<u>Entire Reservoir</u>	<u>Jackson</u>	<u>WAH, CAH, PCR, SCR, DWS</u>
<u>Cannon Creek</u>	<u>Entire Reservoir</u>	<u>Bell</u>	<u>WAH, CAH, PCR, SCR, DWS</u>
<u>Cumberland</u>	<u>Entire Reservoir</u>	<u>Pulaski</u>	<u>WAH, PCR, SCR, DWS</u>
<u>Dale Hollow</u>	<u>Entire portion of Reservoir within Kentucky</u>	<u>Clinton/Cumberland</u>	<u>WAH, PCR, SCR</u>
<u>Laurel River</u>	<u>Entire Reservoir</u>	<u>Laurel/Whitley</u>	<u>WAH, CAH, PCR, SCR, DWS</u>
<u>Martins Fork</u>	<u>Entire Reservoir</u>	<u>Harlan</u>	<u>WAH, PCR, SCR</u>
<u>Wood Creek</u>	<u>Entire Reservoir</u>	<u>Laurel</u>	<u>WAH, CAH, PCR, SCR, DWS</u>

FRANK DICKERSON, Commissioner

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: September 22, 1989

FILED WITH LRC: September 26, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 1989 at 7 p.m. at the Kentucky State University Administrative Services Building Auditorium, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 23, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Persons not wishing to attend the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or to provide written comments on the proposed administrative regulation to: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lewis G. Miller

(1) Type and number of entities affected: This regulation establishes use classifications for surface waters of the Commonwealth. Waterbodies, zones, and use classifications underlined in the tables in Section 7 are additions and are addressed in this regulatory impact analysis. Classifications identify those uses which the cabinet determines a surface water is capable of attaining. Each use classification has associated numerical and narrative criteria established to protect it. As stated in Section 7(2), waters not listed in this regulation are designated for the uses of warm water aquatic habitat (WAH), primary (PCR) and secondary (SCR) contact recreation and domestic water supply (DWS) at the point of withdrawal. 52 stream segments being classified in this regulation retain those classifications. Therefore entities discharging to these surface waters will not be affected because there are no additional classifications being imposed.

Affected by this regulation are those entities which, through their activities, influence water quality in surface waters designated for cold water aquatic habitat (CAH) and outstanding resource water (ORW) uses and those entities which benefit from maintenance and protection of these uses. Also affected are entities discharging to Paddy's Run which is being designated for PCR and SCR uses only. Directly affected are those facilities that discharge to a receiving surface water through a discrete source such as a conduit or ditch (point source pollution). Point source discharges to surface waters are regulated by the Kentucky Pollutant Discharge Elimination System (KPDES) program, with limits set to maintain water quality. These dischargers are affected through routine maintenance costs and when necessary, costs to upgrade treatment. Table 1 lists permitted point source dischargers to surface waters being designated for CAH and ORW uses. Point source dischargers to Paddy's Run are also listed.

TABLE 1. Permitted Facilities Discharging to Surface Waters Being Classified for Cold Water Aquatic Habitat (CAH) or Outstanding Resource Water (ORW) Use. Also Listed are Those Facilities Discharging to Paddy's Run

<u>Surface Water</u>	<u>Use</u>	<u>Facility</u>
Paintsville Lake	CAH	KY Dept. of Parks (DOP) Paintsville Lake
Greenbo Lake	CAH	KY DOP - Greenbo Lake State Park
Licking River (RMI 169.6-176.8)	CAH	U.S. Army Corps of Engineers (COE)-Cave Run Dam, Resid/Office
Green River (RMI 181.7-225.9)	ORW	Mammoth Cave National Park, Munfordsville, City of-POTW
Turnhole Spring	ORW	KY Dept. of Transporta- tion-Cumberland Pkwy- Toll Plaza Best Western Park Mammoth Resort
Nolin River (RMI 0.0-7.6)	CAH	Kyrock School Great Onyx Job Corps Center
Rough River (RMI 72.4-89.3)	CAH	KY DOP-Rough River State Park
Laurel River Lake	CAH	Keavy School Oak Grove School Laurel River KOA Campground

		USDA-Forest Service- Holly Bay Rec. Area
		USDA-Forest Service Craig's Cr. Rec. Area
		Northland Estates Subdivision
		COE-Laurel River-Grove Rec. Area
		Laurel Lake Family Campground
		KY Interlake DBA Corbin Truck Stop
Wood Creek Lake	CAH	Wood Creek Water District
Tennessee River (RMI 14.5-22.4)	ORW	Pennwalt Corp/ GAF Corporation SKW Alloys, Inc. Airco Carbide Air Products and Chem.- Calvert City B.F. Goodrich Chem. KY DOP-KY Dam Village State Park Tenn. Valley Authority- KY Hydro Plant-KY Dam Powerhouse
Paddys Run	PCR, SCR	B.F. Goodrich Co. Dupont DeNemours & Co. Texaco Bulk Plant Reynolds Metals #3
Source - Division of Water files.		

Table 2 lists the total number of facilities discharging to all surface waters being classified in this regulation. Appendix A lists facilities discharging to these surface waters by type and ownership class.

TABLE 2. Facilities Discharging to Surface Waters being Classified in this Regulation, by Major Basins

Basin	# of Direct Discharges
Mississippi	3
Tennessee	37
Cumberland	
(lower basin)	44
(upper basin)	97
Green	101
Salt	31
Kentucky	275
Licking	59
Tygarts	1
Little Sandy	20
Big Sandy	162
Ohio	4
TOTAL	834

Source - Division of Water files

Mining activities will be affected in streams classified as Outstanding Resource Waters. Mines (proposed or active) in watersheds of streams designated for ORW use are listed in Table 3.

TABLE 3. Mining Activities (Proposed or Active) in Watersheds of Streams Designated for Outstanding Resource Water (ORW) Use

Waterbody	Mine
Eagle Creek	Shamrock Coal
Middle Fork	
Rockcastle River	Ruby Coal
Little Clear Creek	Cairnes Coal
	Bell Co. Coal
Horse Lick Creek	Bob's Construction

Buck Creek Gatliff Coal
Source - Division of Water files

Entities benefiting from water quality maintenance include the general public, persons served by domestic water supplies, food fish production (wild and farm-raised), and recreational enthusiasts (fishermen, campers, boaters, and swimmers). Table 4 lists populations (general public) within each major basin.

TABLE 4. 1986 Population by Major River Basin*

Basin	Population
Mississippi	51,500
Tennessee	54,500
Cumberland	
(lower basin)	122,600
(upper basin)	326,400
Green	508,300
Salt	391,831
Kentucky	672,150
Licking	349,500
Tygarts	31,700
Little Sandy	51,625
Big Sandy	202,525
Ohio	992,725
TOTAL	3,755,356

*Based on data provided by the University of Louisville Center for Urban Studies.

Table 5 lists the population served by domestic water suppliers in the major river basins. Only those surface waters being classified were used in calculating population served.

TABLE 5. 1988 Population Served by Domestic Water Supplies in Classified Surface Waters

Basin	Population Served
Mississippi	1,400
Tennessee	4,500
Cumberland	
(lower basin)	30,676
(upper basin)	110,038
Green	134,996
Salt	25,190
Kentucky	502,763
Licking	275,935
Tygarts	NA ^a
Little Sandy	12,317
Big Sandy	85,527 ^b
Ohio	1,650 ^c
TOTAL	1,184,992

^aNone served

^bTug Fork is utilized as a DWS by the West Virginia cities of: Matewan, Williamson and Kermit. Big Sandy River is utilized as a DWS by the West Virginia cities of: Kenova and Fort Gay.

^cPopulation served in Ballard and McCracken counties.

Table 6 lists the number of licensed sport fishermen, number of campgrounds, and number of marinas and river outfitters in each river basin.

TABLE 6. Number of Sport Fishermen, Campgrounds, and Marinas and River Outfitters in Each River Basin

Basin	# Sport Fishermen ^a	Camp-grounds ^b	Marinas ^b and River Outfitters
Mississippi	4,475(KY)*3 1,983(NR)	1	NA
Tennessee	33,037(KY) 48,923(NR)	24	22
Cumberland (lower)	15,583(KY) 20,379(NR)	10	7
(upper)	68,397(KY) 7,895(NR)	27	20
Green	80,119(KY) 15,265(NR)	25	11
Salt	97,227(KY) 4,832(NR)	1	1
Kentucky	116,703(KY) 6,305(NR)	13	14
Licking	56,395(KY) 8,605(NR)	6	2
Tygarts	7,131(KY) ^c 1,021(NR)	NA	NA
Little Sandy	12,953(KY) 2,065(NR)	2	2
Big Sandy	29,423(KY) 1,670(NR)	4	2
Ohio	9,018(KY) ^d 2,663(NR)	NA	NA

^aData provided by the Kentucky Department of Fish and Wildlife Resources. Totals are for 1987.

^bData obtained in Kentucky Outdoor Directory. Kentucky Department of Travel Development. 1988.

^c(KY) - Kentucky resident sport fishermen.
(NR) - Nonresident sport fishermen.

^dBallard and McCracken counties.

NA - Data not available.

A listing of domestic water suppliers, fishery type and use, campgrounds, marinas, and river outfitters is presented in Appendix B.

(a) Direct and indirect costs or savings to those affected:

1. First year: No additional costs in the first year should result above those: (1) already being incurred by wastewater treatment facilities currently meeting their KPDES

effluent limits; or (2) projected as necessary for the upgrade of wastewater treatment facilities not meeting their KPDES effluent limits. As these regulatory use classifications do not represent a change from current interpretations of water quality standards regarding attainable water quality, treatment requirements, and facilities' compliance, no new costs should result above that already required of and anticipated by the above entities.

New dischargers or new expansions to treatment works of current dischargers may have additional costs depending on the uses associated with the waters into which they discharge. Additional costs would be associated with more stringent limits on dissolved oxygen and total residual chlorine for discharges to CAH waters and possible biomonitoring requirements for discharges to ORW's. Exact costs cannot be determined in the absence of plans for expansion or new facility locations.

This is not to say that the attainment of water quality commensurate with supporting beneficial uses in Kentucky does not have cost impacts. The distinction being made here is that these costs are not usually new costs resulting from this regulation and that the entities affected are aware of these continuing, long-standing facility compliance requirements. As an example, Table 7 presents construction grant funding for projects which came on-line during calendar years 1986 and 1987. Significant improvements of in-stream water quality have been realized through the construction of wastewater treatment facilities. However, a 1986 needs survey, conducted by the cabinet as part of its planning process, indicates that municipal dischargers continue to impair water quality and pose potential human health problems. Table 8 presents needs in investment for wastewater treatment facilities in Kentucky for 1986 and the year 2008. It illustrates the long-term nature of planning for necessary water quality improvements by the municipalities, and is not a result of amendments proposed in this regulation.

TABLE 7. Construction Grants-Funded Projects Which Came On-line During Calendar Years 1986 and 1987

Project	Date on Line	Design Flow (MGD)	Treatment ^a Cost	Other Cost
Augusta	Feb. 86	0.170	\$ 416,333	\$ 214,475
Berea	Oct. 87	2.100	\$ 6,178,465	\$ 2,668,514
Boyd/Greenup	Oct. 87	Sewers	\$ -0-	\$ 486,432
Carrollton	Feb. 86	0.700	\$ 3,406,874	\$ -0-
Centertown	Mar. 87	0.045	\$ 578,000	\$ 1,178,000
Fleming-Neon	Mar. 87	0.485	\$ 1,699,000	\$ 5,330,000
Flemingsburg	Dec. 86	0.656	\$ 2,950,122	\$ 247,081
Florence	Oct. 86	Sewers	\$ -0-	\$ 8,862,885
Fountain Run	Nov. 86	0.028	\$ 1,793,000	*
Franklin	Jan. 86	3.200	\$ 3,992,000	\$ 1,669,000
Lexington M/S	Apr. 86	Sewers	\$ -0-	\$ 2,660,000
Lexington S/E	Mar. 87	Sewers	\$ -0-	\$ 5,075,552
Livermore	Nov. 86	Sewers	\$ -0-	\$ 165,000
London	Jan. 86	4.000	\$ 6,155,000	\$ 1,281,000
Middlesboro	Jan. 87	2.800	\$ 9,492,000	\$ 2,903,000
Midway	Feb. 86	0.253	\$ 1,648,053	\$ 275,690
Milton	Dec. 87	0.160	\$ 535,476	\$ 1,439,942
Monticello	Mar. 87	0.700	\$ 3,186,000	\$ 1,541,000
Sadieville	Feb. 86	0.033	\$ 935,149	\$ 599,634
Stanford	Jan. 87	0.800	\$ 2,297,000	\$ 263,000
Sturgis	Dec. 87	0.500	\$ 2,554,000	\$ 186,000
TOTALS			\$47,816,472	\$37,046,205

^aCost includes local share

*Subsurface wastewater disposal system

TABLE 8. Investment Needs for Wastewater Treatment Facilities in Kentucky 1986-2008
(In January 1986 millions of dollars)

Facility	For Current 1986 Population	Projected Needs 2008 Population
Secondary treatment	\$ 193	\$ 286
Advanced secondary treatment	\$ 53	\$ 78
Infiltration/inflow	\$ 76	\$ 76
Major rehabilitation of sewers	\$ 8	\$ 8
New collector sewers	\$ 536	\$ 646
New interceptor sewers	\$ 252	\$ 401
Correction of combined sewer overflows	\$ 22	\$ 22
TOTAL	\$1,140	\$1,517

Existing facilities which discharge into waters which are newly classified for ORW or CAH use will have no additional costs in the first year. New discharges or expansions at existing facilities which would change their discharge permit conditions would have additional costs. Since the cabinet has no information to indicate what future expansions will take place or whether new dischargers plan to locate in these areas, costs would be speculative and are therefore not addressed.

Savings to affected entities primarily relate to maintaining viable sport and commercial fishery resources, community water supplies, water-based recreation, and protecting threatened and endangered species of fish, wildlife, and plants. Approximately 1,184,992 Kentucky citizens will benefit from maintaining water supplies vital for domestic use. Maintenance of those water supplies is also vital for agriculture and industrial use, and for sustained economic growth and development in 93 Kentucky counties.

Aesthetics, recreational potential, and the intrinsic value of preserving Kentucky's aquatic environment for present and future generations are appropriate and important parameters to protect. Unfortunately, the degree and quality

of a user's experience and the value society places on preserving our natural heritage are intangible qualities which are difficult to measure.

To illustrate the importance of Kentucky's fishery resources, a significant amount of revenue is received by the state, local units of government, and the private sector in the form of privilege fees, licenses, tags, and permits; and expenses associated with bait and tackle, food and lodging, and transportation for in- and out-of-state residents. In 1985 dollars, the U.S. Fish and Wildlife Service reported that \$76.4 million were spent for food and lodging. Other revenues for all fishing in the Commonwealth included \$60.4 million in transportation expenses; \$10.6 million in privilege fees; \$5.7 million in licenses, tags, and permits; and \$45.3 million in fishing equipment (National Survey of Fishing, Hunting and Wildlife Associated Recreation-Kentucky, U.S. Department of Interior, Fish and Wildlife Service). In 1987, 632,375 sport fishermen (resident and nonresident) spent \$6.9 million for licenses, with 40,471 sport fishermen purchasing trout stamps worth a total of \$141,649 (pers. comm. Kentucky Department of Fish and Wildlife Resources).

Food fish production in Kentucky, while not as large as in some states in the southeast, is a growing industry. United States Department of Agriculture statistics indicate that 60 catfish operations in the state generate \$1.4 million income annually, while seven trout operations generate \$0.75 million. Commercial harvest of wild food fishes is primarily concentrated west of the Green River basin (50% of the commercial fishermen are located in western Kentucky). One major fish broker in the Purchase Area estimated the commercial fish industry to generate \$6-7 million annually.

A total of 1,823 resident and 16 nonresident commercial fishermen harvested Kentucky's waters in 1987. Based on the cost of licenses and ten gear tags per fisherman, at least \$139,256 was spent by commercial fishermen.

Water-based recreational activities (fishing,

boating, canoeing, water skiing) and activities indirectly associated with water (camping, hiking) are an important aspect of the outdoor experience at many Kentucky parks. While an exact breakdown by use activity is not available, the number of guest-days and visitor expenditures paid are available. Table 10 presents number of guest days and visitor expenditures at state parks neighboring or through which surface waters in this regulation lie.

TABLE 10. Guests Days and Visitor Expenditures at Kentucky State Parks (7/1/87-6/30/88)^a

Park	Guest Days	Expenditures
Barren River	24,494	\$263,761.68
Buckhorn	6,899	96,782.27
Columbus-Belmont	3,874	19,101.24
Cumberland Falls	38,632	348,851.35
Dale Hollow	6,052	26,653.93
Ft. Boonesborough	26,667	104,807.87
Burnside	11,879	69,364.98
Grayson	6,398	9,925.90
Greenbo	13,671	114,842.48
Jenny Wiley	25,338	269,098.55
Kenlake	23,795	216,358.41
Kentucky Dam	54,024	559,385.83
Lake Barkley	42,828	479,619.46
Lake Cumberland	40,939	375,046.82
Rough River	20,204	226,286.92

^aInformation obtained from the Tourism Cabinet, Department of Parks.

As further information relating to the outstanding resource water, aquatic life, and recreation use classifications, Table 11 presents results of an activity analysis conducted by the Kentucky Department of Local Government (1984 Assessment and Policy Plan for Outdoor Recreation).

TABLE 11. Activity Analysis: Participation Percentages and Preferences

Activity	Household Part.% ^a	Individual Part.% ^b	Index ^c	Class ^d
Fishing	52.8	37.9	26.3	High
Boating	36.8	29.4	14.3	High
Canoeing	11.6	7.7	3.5	Low
Water				
Skiing	19.0	11.5	4.3	Low
Camping	36.9	31.6	21.4	High
Hiking	31.3	26.0	9.4	Mod

^aPercentage of households reporting at least one participant in the activity.

^bSum of the individual participants/number of individuals in each household x 100.

^cAn average weighted score developed from activity preference selection, higher value indicates higher use preference.

^dActivity classes were assigned based on index value: <5.0 classified "low", 5.0 - 9.9 classified moderate; >10.0 classified as high.

This information indicates the importance of water-based recreational activities to Kentuckians. The water quality program of Kentucky, among other things, is integral to maintaining and ensuring that quality aquatic resources are available for outdoor recreation opportunities.

Regarding surface waters classified as ORWs which support threatened and endangered species, no attempt is made here to estimate their worth

or value to the Commonwealth or the nation. Suffice it to say that it is a national goal to protect species of fish, wildlife, and plants that are threatened with extinction, based on the Congressional finding "that these species are of aesthetic, ecological, educational, historical, recreational, and scientific value to the nation and its people" (Endangered Species Act of 1973, P.L. 93-205) (16 U.S.C.A. 1531 et seq.)

Paddy's Run Reclassification:

Table 12 lists estimates of costs which will be saved by the reclassification of Paddy's Run. The reclassification will save the facilities the expense of outfall relocation, effluent treatment and yearly maintenance costs, which would have been required if the stream remained classified as warmwater aquatic habitat.

TABLE 12. Summary of Cost Estimates^a

Industry	Relocation of Outfalls	Treatment of Effluent
AIRCO Carbide	\$ 75,000*	(1)
B.F. Goodrich	\$ 250,000*	(1)
DuPont	\$5,000,000*	\$7,850,000 (0.35 million de-chlorination facilities)
Louisville Gas & Electric Company	\$ 300,000*	(1)
Reynolds Aluminum	\$1,500,000*	(1)
Rohm and Haas	\$ 830,000*	(1)

^aSource - A Petition for the Reclassification of Paddy's Run, The Rubbertown Group, June 1988.

(1) Uncertainty concerning potential new stormwater run-off regulations makes it impossible at present to estimate the costs of treatment.

*Does not include \$25,000 per year in maintenance costs.

2. Continuing costs or savings: Existing facilities which discharge to surface waters newly classified for WAH, CAH and ORW uses will not have new continuing costs beyond what is already being required of them.

To protect the water quality and associated biological communities of ORWs, new or expanded discharges may need to be limited. New dischargers to ORWs may be restricted if effluents threaten degradation of this resource or biomonitoring may be required. Suffice it to say that exact treatment needs and costs of individual dischargers are case-specific depending on the technology employed, the waste characteristics, the size of the population being served, plant capacity, and the size and characteristics of the receiving water. Aggregate costs cannot be determined since the cabinet has no information to indicate what future expansion will take place or whether new dischargers plan to locate in these areas.

New discharges to cold water aquatic habitat waters may have treatment requirements which are more stringent due to stricter dissolved oxygen and total residual chlorine criteria. In the case of reservoirs, a determination will be made on whether or not the discharge will affect that region of the lake (usually deeper, cooler areas with sufficient dissolved oxygen) which is

habitat for trout. Again, aggregate costs cannot be determined because of the case-specific nature of each discharge and the receiving surface water, and the lack of information on future development.

The Paddy's Run reclassification will result in continued savings from not having to maintain treatment equipment and physical structures which would have been required to meet aquatic life criteria. Estimates from Table 12 indicate a yearly savings of \$150,000 for the industries involved.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Same as (1)(a)2. above.

(b) Reporting and paperwork requirements: This regulation does not contain any reporting or paperwork requirements. The regulation merely specifies legitimate stream uses for surface waters.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Changes as specified in this regulation will have no effect on the operation of or costs to the Natural Resources and Environmental Protection Cabinet. The cabinet has already implemented the requirements of this regulation and has internalized associated costs within normal budget appropriations. This regulation as it relates to the operation of the cabinet does not change the basis for, or the routine procedures involved, in managing construction grants, permitting, compliance monitoring, or enforcement.

2. Continuing costs or savings: Same as (2)(a)1. above.

3. Additional factors increasing or decreasing costs: None determined.

(b) Reporting and paperwork requirements: The regulation will not affect the amount of paperwork of the Natural Resources and Environmental Protection Cabinet.

(3) Assessment of anticipated effect on state and local revenues: No impact on revenues will result since the use designations do not change the wastewater treatment requirements for existing facilities necessary for maintenance of the designated uses. Expansions of existing facilities which now discharge to ORWs may not be allowed if the discharge will permanently change the existing water quality or cause harm to threatened or endangered species of aquatic organisms. The same limitation may be placed on new dischargers. This may limit economic development in these areas. New discharges to waters classified for CAH use may have stringent dissolved oxygen and total residual chlorine discharge requirements. Since the nature of these actions is speculative, the effect on local or state revenues could not be determined.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Cold water Segments: Within the context of the CAH use classifications, no alternatives were evaluated. The Commonwealth, through the Kentucky Department of Fish and Wildlife Resources, is committed to maintaining the viability of Kentucky's cold water fishery resource. Based on the affirmative survey responses of Kentucky sport fishermen (Kentucky Fisherman Attitude Survey: 1982, Kentucky Department of Fish and Wildlife Resource (KDFWR)), the KDFWR has undertaken a program to establish wild trout and "two-story" trout fisheries in lakes and streams

where a suitable cold water habitat is available. Since Kentucky's stocking program represents a significant expenditure of public funds and generates considerable revenue for the state, local units of government, and the private sector, it is incumbent on the cabinet to safeguard this investment by maintaining water quality suitable for cold water aquatic species. In addition, KRS 224.020 requires the cabinet to protect waters for all legitimate uses, including cold water aquatic habitat.

Outstanding Resource Waters: Surface waters that support federally recognized endangered or threatened species under the Endangered Species Act of 1973, as amended, are automatically designated as outstanding resource waters by 401 KAR 5:031. Under the present regulation no alternative exists to not listing streams supporting species listed under the Endangered Species Act as ORWs. Surface waters supporting one or more of the following species are designated as ORWs:

Phoxinus cumberlandensis - Blackside dace
Potamilus capax - Fat pocketbook mussel
Plethobasus cooperianus - Orange-footed pearly mussel
Lampsilis orbiculata - Pink mucket pearly mussel
Pleurobema plenum - Rough pigtoe mussel
Villosa trabalis - Cumberland bean pearly mussel

Pegias fabula - Little winged pearly mussel
Palaemonias ganteri - Kentucky cave shrimp.

Surface Waters Designated for Warm Water Aquatic Habitat, Primary and Secondary Contact, Recreation and Domestic Water Supply: Each of the major river basins received a use attainability analysis prior to this designation. The purpose of use attainability analyses is to characterize current water quality and to ascertain whether or not uses are currently being met or given the application of waste treatment controls, could be attained in the future. It is the opinion of the cabinet that the prescribed uses for the listed surface waters are currently being met. Therefore, no other alternatives to these use classifications appear to be feasible, warranted, or available under KRS 224.020.

Reclassification of Paddy's Run: The cabinet has been petitioned by several entities in Louisville (The Rubbertown Group) for the reclassification of Paddy's Run. The petition followed the requirements outlined in this regulation and the cabinet is now formally acting on this petition. It is the cabinet's opinion that the petition has merit and that the use of WAH is not appropriate due to the following reasons: (1) WAH is not an existing use; (2) The interruption of the Paddy's Run confluence with the Ohio River due to a hydrologic modification constructed in the mid 1950's (the stream discharges to a stormwater lift station, not the Ohio River) which precluded the WAH use attainment from that date; (3) Dissociation of Paddy's Run with the Ohio River except during high floods and resulting disruption of aquatic ecosystems (severely restricting immigration and colonization of Paddy's Run); (4) Greatly reduced natural flow due to urban and industrial development.

The alternative to reclassification is the questionable expenditure of millions of dollars for the treatment of effluent or the relocation of outfalls. Recreational uses will be retained

for Paddy's Run because swimming and wading are possible, although the Cabinet does not encourage the public to utilize the stream for this purpose because of safety related concerns. All designated uses will be protected in downstream waters (Ohio River).

Reclassification of Hood Creek: Hood Creek was previously classified for the cold water aquatic habitat (CAH) use in 1985. Based on stream surveys conducted in 1987, the Kentucky Department of Fish and Wildlife Resources recommended the deletion of the CAH use due to high late summer temperatures (80°F) which are not conducive for supporting trout populations. In addition, flows cease during part of the year which prevents the stream from supporting trout on a year-around basis. Reclassification of Hood Creek from the CAH to WAH use is in agreement with this regulation based on nonattainability due to natural background conditions and the fact that the use never became established (i.e., was not therefore an existing use). Therefore, no alternative to reclassification of Hood Creek appears warranted.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, rules, regulations, or government policy are in conflict with this regulation.

(a) Necessity of proposed regulation if in conflict: NA.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA.

(6) Any additional information or comments: It is suggested that the RIAs prepared for proposed amendments to 401 KAR 5:029 and 401 KAR 5:031 be read to obtain a broad overview of the water quality standards regulations and their impacts. Those two regulations and this regulation comprise Kentucky's water quality regulations.

TIERING: Was tiering applied? No. Tiering was not applied since the regulation affects all discharges into surface waters of the Commonwealth, irrespective of ownership, capacity, or unit processes or treatment employed.

APPENDIX A

Summary of Discharge Ownership Classes by
Basin for Surface Waters Classified by
this Regulation Update

Basin	Federal	State	County	City/ Local	Private	Other
Big Sandy	5	3	13	11	129	1
Little Sandy	1	6	1	7	5	-
Tygarts	-	-	-	-	-	1
Licking	2	2	14	11	49	1
Kentucky	4	12	38	42	178	1
Salt	1	1	3	11	15	-
Green	16	8	19	22	36	-
Cumberland						
(lower)	9	4	-	9	22	-
(upper)	12	12	10	14	50	-
Tenn.	5	3	2	4	22	1
Mississ.	-	1	-	1	1	-
Ohio	-	-	-	-	4	-
TOTAL	55	52	100	132	511	5

Summary of Discharge Facility Types by
Basin for Surface Waters Classified by
this Regulation Update

Basin	Small Sewage	Municipal
Big Sandy	87	8
Little Sandy	11	3
Tygarts	-	-
Licking	45	6
Kentucky	132	23
Salt	9	7
Green	36	13
Cumberland		
(lower basin)	27	4
(upper basin)	51	8
Tennessee	20	2
Mississippi	1	1
Ohio	-	-
TOTAL	419	75

Basin	Subdivision	School
Big Sandy	9	10
Little Sandy	1	1
Tygarts	-	-
Licking	1	12
Kentucky	13	37
Salt	3	3
Green	1	18
Cumberland		
(lower basin)	-	-
(upper basin)	2	9
Tennessee	-	1
Mississippi	-	-
Ohio	-	-
TOTAL	30	91

Basin	Water	Industrial	Other
Big Sandy	5	42	1
Little Sandy	2	1	1
Tygarts	-	-	1
Licking	5	9	-
Kentucky	20	47	3
Salt	4	5	-
Green	12	20	1
Cumberland			
(lower basin)	6	6	1
(upper basin)	11	17	-
Tennessee	3	10	1
Mississippi	-	1	-
Ohio	-	4	-
TOTAL	68	162	9

APPENDIX B

BIG SANDY

Entities benefiting from water quality maintenance:

- a) Basin population: 202,525
- b) Domestic water supplies

Waterbody	Water Supply	Population Served
Big Sandy River	Ashland Water Works/ Plant #1	47,091
	Calgon Carbon Corp.	270
Tug Fork	Fort Gay & Kenova, WV	
	Matewan, Kermit and Williamson, WV	
Levisa Fork	Louisa Water Dept.	5,000
	Paintsville Mun. Water Works	7,500
	Beaver Elkhorn Water District	5,511
	Prestonsburg Water Co.	9,065

Russell Fork	Elkhorn City Water Department	1,498
	Mountain Water Dept.	6,487
Dewey Lake	Corps of Engineers/	
	Dewey Lake	80
Fishtrap Lake	Corps of Engineers/	
	Fishtrap Lake	25

c) Recreational uses
1. Fisheries

<u>Waterbody</u>	<u>Warmwater</u>	<u>Coldwater</u>
Big Sandy River	X	
Tug Fork	X	
Levisa Fork	X	
Russell Fork	X	
Fishtrap Lake	X	
Dewey Lake	X	
Paintsville Lake	X	X
Number of: resident sport fishermen	29,423	
trout fishermen	6,383	
nonresident sport fishermen	1,670	

2. Campgrounds and Lodges:

<u>Waterbody</u>	<u>Campground</u>
Russell Fork	Breaks Interstate Park
Fishtrap Lake	Grapevine Recreation Area
Dewey Lake	Jenny Wiley State Resort Park
	German Campground

3. Marinas:

<u>Waterbody</u>	<u>Marina</u>
Fishtrap Lake	Daddy-D-Marina
Dewey Lake	Jenny Wiley State Resort Park

4. River Rafting/Canoeing: None

LITTLE SANDY

Entities benefiting from water quality maintenance:	
a) Basin population: 51,625	
b) Domestic water supplies:	

<u>Waterbody</u>	<u>Water Supply</u>	<u>Population Served</u>
Little Sandy River	Grayson Utility Commission	7,431
Little Sandy River	Greenup Water Plant	4,686
Greenbo Lake	Greenbo Lake State Resort Park	200

c) Recreational uses:
1. Fisheries:

<u>Waterbody</u>	<u>Warmwater</u>	<u>Coldwater</u>
Little Sandy River	X	
Big Sinking Creek		X
Grayson Lake	X	
Greenbo Lake	X	X
Number of: resident sport fishermen	12,953	
trout fishermen	1,492	
nonresident sport fishermen	2,065	

2. Campgrounds and Lodges:

<u>Waterbody</u>	<u>Campground</u>
Grayson Lake	Grayson Lake State Park
Greenbo Lake	Greenbo Lake State Resort Park

3. Marinas:

<u>Waterbody</u>	<u>Marina</u>
Grayson Lake	Grayson Lake Marina
Greenbo Lake	Greenbo Lake State Resort Park

4. River Rafting/Canoeing: None

TYGARTS CREEK

Entities benefiting from water quality maintenance:	
a) Basin population: 31,700	
b) Domestic water supplies: NA	
c) Recreational uses:	
1. Fisheries:	

<u>Waterbody</u>	<u>Warmwater</u>	<u>Coldwater</u>
White Oak Creek	X	
Number of: resident sport fishermen	7,131	
trout fishermen	1,376	
nonresident sport fishermen	1,021	

2. Campgrounds and Lodges: None
3. Marinas: None
4. River Outfitters: None

LICKING

Entities benefiting from water quality maintenance:	
a) Basin population: 349,500	
b) Domestic water supplies	

<u>Waterbody</u>	<u>Water Supply</u>	<u>Population Served</u>
Licking River	Salysville Municipal Water	2,450
	West Liberty Water Co.	2,310
	Morehead Utility Plant Board	19,577
	Western Fleming Water District	3,630
	Carlisle Water Dept.	4,617
	Mt. Olivet Water Dept.	825
	Cynthiana Municipal Water Works	12,100
	Butler Water Works	600
	Falmouth Water Dept.	5,388
	Kenton County Water District #1	224,438

c) Recreational uses:
1. Fisheries:

<u>Waterbody</u>	<u>Warmwater</u>	<u>Coldwater</u>
Licking River (Source to RMI 238.2)	X	
Licking River (RMI 176.8 to 168.5)		X
Licking River (RMI 168.5 to 0.0)	X	
North Fork Licking River	X	
South Fork Licking River	X	
Burning Fork	X	
Cave Run Lake	X	

ADMINISTRATIVE REGISTER - 828

Number of: resident sport fishermen	56,395	Mill Creek	Natural Bridge State	
trout fishermen	2,257	Lake	Park	450
nonresident sport fishermen	8,605			

2. Campgrounds and Lodges:

<u>Waterbody</u>	<u>Campground/Lodge</u>
Cave Run Lake	Buckskin Run Camper Park
	Cave Run Campground
	Clay Lick Boat-In Campground
	Twin Knobs Recreation Area
	Clear Creek Recreation Area
	Zilpo Recreation Area

3. Marinas:

<u>Waterbody</u>	<u>Marina</u>
Cave Run Lake	Cave Run Marina

4. River Rafting/Canoeing:

<u>Waterbody</u>	<u>Outfitter</u>
Licking River & Tributaries	Thaxton's Canoe Trails

KENTUCKY

Entities benefiting from water quality maintenance:

- a) Basin population: 627,150
- b) Domestic water supplies

c) Recreational uses: 1. Fisheries:

<u>Waterbody</u>	<u>Warmwater</u>	<u>Coldwater</u>
Kentucky River	X	
North Fork KY River	X	
Middle Fork KY River	X	
South Fork KY River	X	
Red River	X	
Dix River (above Herrington Lake)	X	
Dix River (below Herrington Lake)		X
Hanging Fork Creek	X	
Bailey Run	X	
Buck Lick Creek	X	
Cedar Brook	X	
Clarks Run	X	
Parched Corn Creek		X
Ross Creek	X	
Bert Combs Lake	X	X
Buckhorn Lake	X	
Carr Fork Lake	X	
Fishpond Lake	X	X
Herrington Lake	X	
Mill Creek	X	X

Number of: resident sport fishermen	116,703
trout fishermen	7,768
nonresident sport fishermen	6,305

2. Campgrounds and Lodges:

<u>Waterbody</u>	<u>Water Supply</u>	<u>Population Served</u>
Kentucky River	Irvine Municipal Util.	11,960
	Richmond Water/Gas/Sewer Works	35,874
	East KY Power/JK Smith Station	25
	Winchester Municipal Utilities	25,809
	East KY Power/Dale Station	59
	Lancaster Water Wks.	10,639
	Wilmore Water Works	3,135
	Nicholasville Water Department	22,068
	Kentucky-American Water Co.	242,291
	Harrodsburg Municipal Water Department	16,001
	Lawrenceburg Water/Sewer Department	12,989
	Frankfort Electric & Water Plant Board	47,599
North Fork KY River	Whitesburg Municipal Water Works	1,535
	Hazard Water Dept.	12,346
	Jackson Municipal Water Works	2,800
	Beattyville Water Wks.	1,854
Middle Fork KY River	Hyden/Leslie Co. Water District	2,700
South Fork KY River	Booneville Water and Sewer	2,500
Red River	Clay City Water Plant	2,255
	Stanton Water Works	4,500
Bert Combs Lk.	Manchester Water Works	10,210
Carr Fork	Army Corps of Engineers/Irishmans Creek	2,450
Herrington Lk.	Danville City Wtr. Wk.	29,664
	North Point Training Center	1,050

<u>Waterbody</u>	<u>Campground/Lodge</u>
Herrington Lake	Gwinn Island Fishing Resort
	Chimney Rock Campground
Kentucky River	Kentucky River Camp-ground
	Strohmeier's Still Waters Campground
	Clay's Ferry Campground
	Camp Nelson Campground
	Ft. Boonesborough State Park
Buckhorn Lake	R-R&C Campground
	Trace Branch Campground
Carr Fork Lake	Buckhorn Lake State Park
	Irishman Creek Camp-ground
	Litt Carr Campground

3. Marinas:

<u>Waterbody</u>	<u>Marina</u>
Herrington Lake	Bryants Camp
	Cave Run Fishing Camp
	Chimney Rock Marina
	Gwinn Island Fishing Resort
	King's Mill Marina
	Royalty's Fishing Camp
Kentucky River	Clay's Ferry Boat Dock
	Ft. Boonesborough State Park
	Port of Clinton
	Still Waters Marina
Mill Creek Lake	Natural Bridge Station Resort Park
Buckhorn Lake	Buckhorn Lake State Resort Park
Carr Fork Lake	Carr Fork Marina

4. River Rafting/Canoeing:

<u>Waterbody</u>	<u>Outfitter</u>
Kentucky River	Strohmeier's Still Waters

SALT

Entities benefiting from water quality maintenance:

- a) Basin population: 391,831
b) Domestic water supplies

<u>Waterbody</u>	<u>Water Supply</u>	<u>Population Served</u>
Salt River	Taylorville Water Wks.	6,600
	Salt River Water Dist.	2,943
	Shepherdsville Water Company	2,640
Rolling Fork	Lebanon Water Wks. Co.	11,985
	New Haven Municipal Water Works	1,022

c) Recreational uses:

1. Fisheries:

<u>Waterbody</u>	<u>Warmwater</u>	<u>Coldwater</u>
Salt River	X	
Rolling Fork	X	
Beech Fork	X	
Taylorville Lake	X	

Number of: resident sport fishermen 97,227
trout fishermen 3,591
nonresident sport fishermen 4,832

2. Campgrounds and Lodges:

<u>Waterbody</u>	<u>Campground/Lodge</u>
Salt River	Salt River Recreation Area

3. Marinas:

<u>Waterbody</u>	<u>Marina</u>
Taylorville Lake	Taylorville Lake State Park

4. River Rafting/Canoeing: None

GREEN

Entities benefiting from water quality maintenance:

- a) Basin population: 508,300
b) Domestic water supplies

<u>Waterbody</u>	<u>Water Supply</u>	<u>Population Served</u>
Green River	Greensburg Water Works	8,549
Barren Rvr. Lk.	Glasgow Water Co.	18,760
Barren River	Bowling Green Municipal Utilities	87,257
Drakes Creek	Franklin Water Wks.	20,430

c) Recreational uses:

1. Fisheries:

<u>Waterbody</u>	<u>Warmwater</u>	<u>Coldwater</u>
Green River	X	
Barren River	X	
Big Pitman Creek	X	
Little Pitman Creek	X	
Middle Pitman Creek	X	
Buck Horn Creek	X	
Drakes Creek	X	

West Fork Drakes Crk.	X	
Trammell Fork	X	X
Sharp's Branch	X	
Nolin River	X	X
Rough River	X	X
Barren River Lake	X	
Green River Lake	X	
Nolin Lake	X	
Rough River Lake	X	

Number of: resident sport fishermen 80,119
trout fishermen 8,538
nonresident sport fishermen 15,265

2. Campgrounds and Lodges:

<u>Waterbody</u>	<u>Campground/Lodge</u>
Rough River Lake	Axtel Campground
	Laurel Branch Campground
	North Fork Campground
	Rough River Dam State Resort Park
	Cave Creek Campground
Barren River	Beech Bend Park
Barren River Lake	Barren River Lake State Resort Park
	Beaver Creek Campground
	The Narrows
	The Tailwater
	Bailey's Point
Nolin Lake	Walnut Creek Boat Dock
	Day Creek Campground
	Ponderosa Fishing Camp
	Wax Campground
	Brier Creek Campground
	Moutardier Campground
Green River	Houchins Ferry Campground
	Dennison Ferry Campground
	Headquarters Campground
	Mammoth Cave National Park
Green River Lake	Green River Lake KOA
	Green River Lake St. Park
	Pikes Ridge Campground
	Smith Ridge Campground
	Holmes Bend Campground

3. Marinas:

<u>Waterbody</u>	<u>Marina</u>
Rough River Lake	Nick Bronger's Boat Dock
	Rough River Dam State Resort Park
Barren River Lake	Barren River Lake State Resort Park
	Peninsula Marina
	Walnut Creek Boat Dock
Green River Lake	Green River State Park
	Homels Bend Boat Dock
	Taylor County Boat Dock
Nolin Lake	Moutardier Resort & Marina
	Ponderosa Fishing Camp
	Wax Marina

4. River Rafting/Canoeing: None

LOWER CUMBERLAND RIVER

Entities benefiting from water quality maintenance:

- a) Basin population: 122,600
b) Domestic water supplies

ADMINISTRATIVE REGISTER - 830

<u>Waterbody</u>	<u>Water Supply</u>	<u>Population Served</u>			
Cumberland Rvr.	Crittenden-Livingston Co. Water District	3,759	Lake Cumberland	Jamestown Municipal Water Works	2,145
	Three Rivers Rock Co.	105		Lake Cumberland State Park	500
Lake Barkley	Princeton Water & Wastewater Comm.	13,034		Apple Valley Town-house Assoc.	337
	Eddyville Water Dept.	3,366		Albany Water Works	6,270
	Kuttawa Water Supply	2,062		Burnside Water Co.	1,898
	KY State Penitentiary	1,000		Somerset Water Co.	19,800
	Barkley Lake Wtr. Dst.	7,350		Woodson Bend Prop. Owners Assoc.	1,320
c) Recreational uses:				Monticello Water/Sewer Comm.	9,370
1. Fisheries:				Lake Cumberland Boys Camp	70
<u>Waterbody</u>	<u>Warmwater</u>	<u>Coldwater</u>		Camp Earl Wallace Benny Jones Water Supply	150
Cumberland River	X		Laurel River Lake	London Utility Comm. Barbourville Water & Electric	10,139
Lake Barkley	X			West Laurel Water Assoc.	11,636
Number of: resident sport fishermen		15,583	Wood Creek Lk.	Wood Creek Wtr. Dst.	5,943
trout fishermen		707		East Laurel Wtr. Dst.	7,941
nonresident sport fishermen		20,379		Old Mill Rest/Correctional Fac.	2,983
2. Campgrounds and Lodges:			Beulah Lake	Jackson Co. Water Assoc.	78
<u>Waterbody</u>	<u>Campground/Lodge</u>		Cannon Crk. Lk.	Pineville Water Sys.	5,339
Lake Barkley	Bay View Resort				7,800
	Devils Elbow		c) Recreational uses:		
	Hurricane Creek Recreation Area		1. Fisheries:		
	Lake Barkley State Resort Park		<u>Waterbody</u>	<u>Warmwater</u>	<u>Coldwater</u>
	Prizer Point Marina and Resort		Archers Creek	X	
	Eddy Creek Campground		Beck's Creek	X	
	Holiday Hills Resort Campground		Big Lick Branch	X	
	Boyd's Landing		Brownies Creek	X	
	Eureka Recreation Area		Buck Creek (Whi)	X	
	Tarryon Camping Resort		Bucks Branch	X	
3. Marinas:			Buffalo Creek	X	
<u>Waterbody</u>	<u>Marina</u>		Caney Creek	X	
Lake Barkley	Eddy Creek Resort & Marina		Cumberland River	X	X
	Green Turtle Bay		Davis Branch	X	
	Holiday Hills Resort		Eagle Creek	X	
	Kuttawa Harbor Marina		East Prong Creek		X
	Lake Barkley State Resort Park		Indian Creek		X
	Leisure Cruise Marina		Laurel Creek		X
	Prizer Point Marina		Little Clear Creek	X	
4. River Rafting/Canoeing: None			Little Yellow Creek	X	
UPPER CUMBERLAND RIVER			Long Branch	X	
Entities benefiting from water quality maintenance:			Mill Creek (BELL)	X	
a) Basin population: 326,400			Mill Creek (MCY)	X	
b) Domestic water supplies			Poor Fork Cumberland Rvr.		X
			Rock Creek	X	
<u>Waterbody</u>	<u>Water Supply</u>	<u>Population Served</u>	Ross Creek	X	
Cumberland Rvr.	Burkesville Water Wks.	4,224	Roundstone Creek	X	
	Marrowbone Water Dist.	1,377	Sanders Creek	X	
	Corp. Engineers/Wolfe Creek Power HS	25	Shut-in Creek	X	
	Williamsburg Wtr. Plt.	9,943	Sims Fork	X	
	Cumberland Falls State Park	500	Straight Creek	X	
			Trammel Fork	X	
			White Oak Creek		X
			Wood Creek		X
			Youngs Creek	X	
			Lake Cumberland	X	
			Dale Hollow Lake	X	
			Laurel River Lake	X	X
			Martinas Fork Lake	X	
			Beulah Lake	X	X
			Cannon Creek Lake	X	X
			Wood Creek Lake	X	X

ADMINISTRATIVE REGISTER - 831

Number of: resident sport fishermen 68,397
trout fishermen 14,338
nonresident sport fishermen 26,462

Entities benefiting from water quality maintenance:
a) Basin population: 54,500
b) Domestic water supplies

2. Campgrounds and Lodges:

<u>Waterbody</u>	<u>Campground/Lodge</u>	<u>Waterbody</u>	<u>Water Supply</u>	<u>Population Served</u>
Lake Cumberland	Grinder Hill Dock Camp-ground Ridgemont Trailer Park Cumberland Cove General Burnside State Pk. Sawyer, U.S. Forest Serv. Kendall Recreation Area Lake Cumberland State Resort Park Pine Crest Park Conley Bottom Campground Fall Creek Recreation Area Indian Hills KOA Wolf Creek Recreation Area Buck Creek Dock Cumberland Point Recreation Area Fishing Creek Recreation Area Pulaski County Park Waitsboro Recreation Area Rockcastle Recreation Area Cumberland Falls State Resort Park Grove Boat-In Campground Grove Campground	Kentucky Lake	Jonathan Creek Water Association	4,500
Cumberland River	Dale Hollow Lake St. Park Sulphur Creek Resort Laurel Lake Baptist Camp Laurel Lake Family Camp-ground Craigs Creek Group Area Holly Bay Campground			
Dale Hollow Lake				
Laurel River Lake				

c) Recreational uses:
1. Fisheries:

<u>Waterbody</u>	<u>Warmwater</u>	<u>Coldwater</u>
Tennessee River	X	
Kentucky Lake	X	
Number of: resident sport fishermen		33,037
trout fishermen		167
nonresident sport fishermen		48,923

2. Campgrounds and Lodges:

<u>Waterbody</u>	<u>Campground/Lodge</u>
Kentucky Lake	Cedar Lane Resort Ken Lake KOA Kampground Kenlake State Resort Park Lakeside Campground Lakewood Campground Sportsman's Campground Town & Country Resort Bee Spring Lodge Big Bear Resort King Creek Resort Malcolm Creek Resort Moors Resort KY Dam State Resort Park Land Between the Lakes - 13 camping areas Canal Recreation Area Grand Rivers Campground Barge Island TVA-KY Lake Blood River Camping Cypress Bay Resort Lakeview Cottages and Camping Missing Hill Resort Campground Thoroughbred Campground Southern Komfort Resort KOA Paducah/KY Dam/I-24
Tennessee River	

3. Marinas:

<u>Waterbody</u>	<u>Marina</u>
Dale Hollow Lake	Dale Hollow Lake State Park Hendricks Creek Resort Sulphur Creek Resort Wisdom Dock Wolf River Resort & Marina Beaver Creek Resort Burnside Marina Conly Bottom Resort Grinder Hill Dock Indian Hills Alligator Dock #2 Jamestown Dock Village Lake Cumberland State Park Lee's Ford Dock Resort The Little Marina Poppewell's Alligator Dock #1
Lake Cumberland	Grove Marina Holly Bay Marina
Laurel River Lake	

<u>Waterbody</u>	<u>Marina</u>
Kentucky Lake	Big Bear Resorts Blood River Dock Cedar Knob Resort Cozy Cove Waterfront Resort Cypress Springs Resort Ellenberger Resort Hickory Hill Resort Irvine Cobb Resort Kenlake State Resort Park Kentucky Dam Village Kentucky Lake Sails King Creek Resort Lakeside Marina Lakeview Dock Malcom Creek Resort Missing Hill Resort and Campground Moors Resort Paradise Resort

4. River Rafting/Canoeing:

<u>Waterbody</u>	<u>Outfitter</u>
Cumberland River	Sheltonnee Trace Outfitters Tri-Fork Canoe Rentals, Inc. Rockcastle Adventures

TENNESSEE

Southern Komfort
Sportsman's Marina
Town & Country Resort
Tennessee River VanWinkle Boat Dock

4. River Rafting/Canoeing: None

MISSISSIPPI

Entities benefiting from water quality maintenance:

- a) Basin population: 51,500
b) Domestic water supplies

<u>Waterbody</u>	<u>Water Supply</u>	<u>Population Served</u>
Mississippi River	Wickliffe Municipal Water System	1,400

- c) Recreational uses:
1. Fisheries:

<u>Waterbody</u>	<u>Warmwater</u>	<u>Coldwater</u>
Mississippi River	X	
Murphy's Pond	X	

Number of: resident sport fishermen	4,475
trout fishermen	20
nonresident sport fishermen	1,973

2. Campgrounds and Lodges:

<u>Waterbody</u>	<u>Campground/Lodge</u>
Mississippi River	Columbus-Belmont St. Park

3. Marinas: None

4. River Rafting/Canoeing: None

OHIO

Entities benefiting from water quality maintenance:

- a) Basin population: 992,725
b) Domestic water supplies

<u>Waterbody</u>	<u>Water Supply</u>	<u>Population Served</u>
Ohio River	TVA Shawnee Stream Plant	350
	Paducah Gaseous Diffusion Plant	1,300

- c) Recreational uses:
1. Fisheries:

<u>Waterbody</u>	<u>Warmwater</u>	<u>Coldwater</u>
Ohio River	X	
Metropolis Lake	X	
Swan Lake	X	

Number of: resident sport fishermen	9,018*
trout fishermen	56*
nonresident sport fishermen	2,663*

*Ballard and McCracken Counties only

2. Campgrounds: None

3. Marinas: None

4. River Rafting/Canoeing: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 33 U.S.C.A. Section 1313; 40 CFR Part 131.

2. State compliance standards. The proposed amendments to the above regulation are the result of Kentucky's triennial review of its water quality standards. The amendments contained in the regulation establish designated uses for surface waters in the state. Uses designated for Kentucky's surface waters are: warm water aquatic habitat (which also includes uses by fowl and other wildlife, for arborous growth, and for agricultural and industrial purposes); cold water aquatic habitat; primary contact recreation; secondary contact recreation; domestic water supply; and outstanding resource waters. Amendments have also been made to clarify reclassification procedures, and to provide information on how the cabinet implements the use classifications concept in designation of uses for surface waters.

3. Minimum or uniform standards contained in the federal mandate. 33 U.S.C.A. section 1313 and 40 CFR Part 131 require that states review, and revise if appropriate, their water quality standards at least every three years. That mandate requires that states designate surface water uses and establish water quality criteria, taking into consideration the use and value of water for: public water supplies, protection and propagation of fish and wildlife, recreational purposes, and agricultural, industrial and other purposes, including navigation. Information on general policies applicable to standards which may affect their application and implementation is also required.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation does not impose stricter requirements or responsibilities other than those required by the federal mandate. The federal mandate only requires that state water quality standards consist of designated uses for navigable waters and water quality criteria protective of those uses. This regulation follows that mandate without imposing stricter requirements or other responsibilities, because neither 33 U.S.C.A. Section 1313 nor 40 CFR Part 131 designate uses for Kentucky waters or specify classification procedures, and because no federal water quality standards exist which designate uses for Kentucky's surface waters or specify classification procedures. The federal mandate also requires triennial review of water quality standards. The cabinet is complying with that mandate without imposing stricter requirements or other responsibilities.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable because this regulation does not contain stricter requirements or responsibilities other than those required by the federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes X No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect public water supply and wastewater treatment divisions of local government.

3. State the aspect or service of local government to which this administrative regulation relates. Public water supply and wastewater treatment services of local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation designates use classifications the cabinet determines a surface water is capable of supporting. Each surface water classification has water quality criteria established to protect those uses. Local governments will be affected in two ways. To protect instream uses, local governments will be required to discharge effluent of a quality which will assure protective criteria (see 401 KAR 5:031) are met. Through maintaining and protecting instream uses, local governments can reduce costs of water treatment, thus providing their citizens with low cost potable water. Local governments will also be serving their citizens through the protection of recreational and aquatic life (maintaining edible fish stocks) uses.

**NATURAL RESOURCES & ENVIRONMENTAL
PROTECTION CABINET**
Department for Environmental Protection
Division of Water
(Proposed Amendment)

401 KAR 5:029. General provisions.

RELATES TO: KRS Chapter 224, 40 CFR Part 136

STATUTORY AUTHORITY: KRS 224.020, 224.033, 224.037, 224.060, 33 U.S.C. 1313

NECESSITY AND FUNCTION: This regulation contains a definition and abbreviation section applicable to 401 KAR 5:026, this regulation, and 401 KAR 5:031. [all water quality regulations.] A nondegradation section and [is included pursuant to KRS Chapter 224,] a section pertaining to withdrawal of waters not meeting water quality standards are included. [and criteria is included to address withdrawal of contaminated waters.] A sample collection and analytical methodology section is included to ensure reproducible analytical results. A provision relating to allowable conditions in mixing zones is also included.

Section 1. Definitions and Abbreviations. (1) [General function of definitions.] The following definitions describe terms used in 401 KAR 5:026, this regulation, and 401 KAR 5:031 [this chapter]. Terms not defined below shall have the meanings given to them in KRS 224.005 [relevant statutes] or, if not so defined [in statutes], the meanings attributed by common use.

(a) "Acute-chronic ratio" means the ratio of the acute toxicity (expressed as an LC₅₀ of an effluent or a toxic substance to its chronic toxicity (expressed as a NOEL). It is used to estimate chronic toxicity from acute toxicity data.

(b) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed

for a brief period of time without causing unacceptable harmful effects.

(c) "Acute toxicity" means lethality or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests, due to a short-term exposure (ninety-six (96) hours or less) to a specific toxic substance or mixture of toxic substances.

(d) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect (LC₅₀) by the end of the acute exposure period.

[(a) "Aquifer" means any formation of soil, sand, rock, gravel, limestone, sandstone, or other material or any fracture, crevice, or void in any space formation from which underground water is or may be available.]

(e) "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed indefinitely without causing an unacceptable harmful effect.

(f) "Chronic toxicity" means lethality, reduced growth or reproduction or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures (relative to the life span of the organisms or a significant portion of their life span) to toxic substances or mixtures of toxic substances.

(g) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes no observed unacceptable harmful effect (NOEL) on the test organisms by the end of the chronic exposure period.

(h) [(b)] "Cold water aquatic habitat" means surface waters and associated substrate that will support indigenous aquatic life including self-sustaining or reproducing trout populations on a year-round basis.

(i) [(c)] "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.

(j) [(d)] "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water expected to result in an aquatic ecosystem protective of [suitable for] designated uses of surface waters. [Such] Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health [al use].

(k) [(e)] "Division" means the Division of Water.

(l) "Domestic water supply (DWS)" means surface waters that with conventional treatment will be suitable for: human consumption through a public water system as defined in 401 KAR 6:015, Section 1; culinary purposes; or for use in any food or beverage processing industry; and, meets state and federal regulations under the Safe Drinking Water Act, 42 U.S.C. 300f-300j, as amended.

(m) [(f)] "Effluent ditch" means that portion of a treatment system which is a discrete, person-made conveyance, either totally owned, leased or under valid easement by the discharger, which transports a discharge to waters of the Commonwealth.

(n) [(g)] "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion (the region of the thermocline) of a thermally stratified lake or reservoir.

(o) [(h)] "Eutrophication" means the enrichment of surface waters of the state by the discharge or addition of nutrients.

(p) "Existing uses" means those legitimate uses being attained in or on a surface water of the Commonwealth on or after November 28, 1975, irrespective of its use classification.

(q) [(i)] "Fecal coliform" means the portion of the coliform group of bacteria which are present in the intestinal tract or the feces of warm-blooded animals. It generally includes organisms which are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus two-tenths (0.2) degrees C.

(r) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(s) [(j)] "Hypolimnion" means the lower cold region of a thermally stratified lake or reservoir [body of water] that extends from the metalimnion to the bottom [of the lake and circulation is restricted while stratified with the upper waters thereby receiving no oxygen from the atmosphere].

(t) [(k)] "Indigenous aquatic life" means naturally occurring aquatic organisms including but not limited to bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles and amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from any given surface water.

(u) [(l)] "Intermittent water [stream]" means a stream that flows only at certain times of the year as when it receives water from springs or precipitation in its [the] immediate watershed.

(v) [(m)] "LC₅₀" means that concentration of a toxic substance or mixture of toxic substances which is lethal (or immobilizing, if appropriate) to fifty (50) percent of the species tested in a toxicity test during a specified exposure period. [is used to express the results of bioassays having lethality as the criterion of toxicity. A numerical percentage is used to indicate the percentage of the test animals killed at a given concentration.]

(w) "LC₁" means that concentration of a toxic substance or mixture of toxic substances which is lethal (or immobilizing, if appropriate) to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.

[(n)] "Low flow (seven (7) day, once-in-ten (10) year low flow)" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years and is the governing flow criterion for water quality standards, except where stream flow is regulated, in which case the governing flow shall be the instantaneous minimum flow.]

(x) "Maintain" means to preserve or keep in present condition by not allowing adverse permanent or long-term changes to water quality or to populations of aquatic organisms or their habitat.

[(o)] "Median tolerance limit (TLM)" is a measure of the concentration at which fifty (50) percent of the organisms survive.]

(y) [(p)] "Milligrams per liter (mg/l)" means the milligrams of substance per liter of solution, and is equivalent to parts per million in water assuming unit density.

(z) [(q)] "Mixing zone" means a domain of a water body contiguous to a treated or untreated

wastewater discharge of quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(aa) [(r)] "Natural temperature" means the temperature that would exist in waters of the Commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by [opposed to] climatic change or naturally occurring [seasonally] variable temperature associated with riparian vegetation and seasonal changes.

(bb) [(s)] "Natural water quality" means those naturally occurring physical, chemical, and biological properties of waters.

(cc) [(t)] "Net discharge" means the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(dd) "No observed effect level (NOEL)" means the highest concentration of an effluent or a toxic substance that causes no observed harmful effects on a test species.

(ee) [(u)] "Nonpoint" means any source of pollutants not defined by point source as used in this regulation.

(ff) [(v)] "Outstanding resource waters" means surface waters designated by the cabinet pursuant to 401 KAR 5:031, Section 7.

(gg) [(w)] "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(hh) [(x)] "Productive aquatic communities" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(ii) [(y)] "Propagation" means the continuance of species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of species by artificial culture and stocking.

[(z)] "Public water supply" means only surface water that with conventional treatment will be suitable for: human consumption through a public water system as defined in 401 KAR 6:015, Section 1; culinary purposes; or for use in any food or beverage processing industry and meets state and/or federal regulations under the Safe Drinking Water Act (P.L. 92-523). This term is synonymous with "domestic water supply.]"

(jj) [(aa)] "Standard or water quality standard" means [is] a regulation promulgated by the cabinet establishing the use [or uses] to be made of a surface water [water-body or segment] and the water quality criteria necessary to maintain and protect that use [or uses].

(kk) [(bb)] "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable [clear] hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under proper easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

(ll) [(cc)] "Thermocline" means the plane in a body of water in which the maximum rate of decrease in temperature occurs with respect to depth.

(mm) [(dd)] "Toxic substances" means substances which are bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic or carcinogenic and cause death, disease, behavioral abnormalities, physiological malfunctions or physical deformities in any organism or its offspring or interfere with normal propagation. [interfere with the normal propagation of aquatic life, wildlife, or preclude the legitimate uses of any waters of the Commonwealth.]

(nn) [(ee)] "Warm water aquatic habitat (WAH)" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(oo) "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(2) Abbreviations [used in water quality regulations]:

- (a) °C means degree(s) Celsius;
- (b) EPA - See U. S. EPA;
- (c) °F means degree(s) Fahrenheit;
- (d) KPDES means Kentucky Pollutant Discharge Elimination System;
- (e) mg/l means milligrams per liter (same as ppm);
- (f) NPDES means National Pollutant Discharge Elimination System;
- (g) pCi/l means picocuries per liter;
- (h) ppb means part(s) per billion;
- (i) [(h)] ppm means part(s) per million (assuming unit density, same as mg/l);
- (j) [(i)] ug/l means micrograms per liter (same as ppb assuming unit density);
- (k) [(j)] U.S. EPA means the United States Environmental Protection Agency;
- (l) 7Q10 means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years;
- (m) POTW means public owned treatment works.

Section 2. Nondegradation. (1) It is the purpose of these regulations to safeguard the surface waters of the Commonwealth for their designated uses, to prevent the creation of any new pollution of these [the] waters [of the Commonwealth]; and to abate any existing pollution.

(2) Where the quality of surface [the] waters exceeds that [levels] necessary to support propagation of fish, shellfish, [and] wildlife and recreation in and on the water, that quality shall be maintained and protected unless the cabinet finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the cabinet's [state's] continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the cabinet shall assure water quality adequate to protect existing uses fully. Further, the cabinet will assure that there shall be achieved the highest statutory and

regulatory requirements for waste treatment by all new and existing point sources and that nonpoint sources of pollutants be controlled by application of all cost effective and reasonable best management practices. [The state water quality standards and continuing planning process designed to provide for the protection of existing water quality and/or the upgrading or enhancement of water quality in all waters of the Commonwealth shall serve as the method for implementation of this policy.]

(3) The implementation of this section [policy] shall conform to 40 CFR 131.12 to the extent allowed by KRS 224.020.

(4) Water quality shall be maintained and protected in those waters designated as outstanding resource waters according to procedures specified in Section 7(2) of 401 KAR 5:031.

(5) In those cases where potential water quality impairment associated with a thermal discharge is involved, a successful demonstration conducted under Section 316 of the Clean Water Act, 33 U.S.C. 1326, shall [is considered to] be in compliance with all portions of this [nondegradation] section.

Section 3. Withdrawal of Contaminated Water. It is recognized that surface waters will, on occasion, not meet the standards and criteria established in 401 KAR 5:031 [these regulations]. Withdrawal and subsequent discharge of these waters without alteration of the physical, or chemical characteristics into the same or similar surface water [body] will not be considered a violation of water quality standards [these regulations]. The cabinet will determine effluent criteria and KPDES permit limitations in these situations based on the quality of the raw and receiving waters. The cabinet retains the right to require modification under the provisions of 401 KAR 5:035, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080 [Section 1, if water quality characteristics so dictate].

Section 4. Sample Collection and Analytical Methodology. All methods of [sample collection,] preservation and analysis used to determine conformity or nonconformity with water quality standards shall be governed by [in accordance with those prescribed in] 40 CFR Part 136, as amended, when applicable. Sample collection and other methods not found in the above reference may be used where appropriate if approved by the cabinet.

Section 5. Mixing Zones. The following guidelines and conditions are applicable to [in] all mixing zones:

(1) The cabinet will assign, [shall,] on a case-by-case basis, [specify] definable geometric limits for mixing zones for a discharge or a pollutant or pollutants within a discharge. Applicable limits shall include, but may not be limited to, the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones. Mixing zones will not be allowed, unless assigned by the cabinet.

(2) Concentrations of toxic substances which exceed the acute criteria for protection of aquatic life set forth in 401 KAR 5:031 shall not exist [ninety-six (96) hour LC50 or other

appropriate LC50 tests for representative indigenous aquatic organisms are not allowed] at any point within an assigned [the] mixing zone or in the discharge itself unless a zone of initial dilution is assigned. A zone of initial dilution may be assigned on a case-by-case basis at the discretion of the cabinet. Concentrations of toxic substances shall not [which] exceed [one-third (1/3)] the acute criteria [ninety-six (96) hour LC50 or other appropriate LC50 tests for representative indigenous aquatic organisms are to be met] at the edge of the assigned zone of initial dilution. Chronic criteria for the protection of aquatic life and criteria for the protection of human health from the consumption of fish tissue shall [are to] be met at the edge of the assigned [allowable] mixing zone.

(3) The location of a mixing zone shall not interfere with fish spawning or [areas,] nursery areas, fish migration routes, public water supply intakes, or bathing areas, nor preclude the free passage of fish or other aquatic life.

(4) Whenever possible the mixing zone shall not exceed one-third (1/3) of the width of the receiving stream, and in no case shall exceed one-half (1/2) of the cross-sectional area.

(5) In lakes and other surface impoundments, the volume of a mixing zone shall not affect in excess of ten (10) percent of the volume of that portion of the receiving waters available for mixing.

(6) [In all cases,] A mixing zone shall [must] be limited to an area or volume which will not adversely alter the legitimate uses of the receiving water, nor [shall a mixing zone] be so large as to adversely affect an established community of aquatic organisms.

(7) In the case of thermal discharges, a successful demonstration conducted under Section 316(a) of the Clean Water Act shall constitute compliance with all provisions of this section.

[(8) Criteria listed in Section 4 of 401 KAR 5:031 do not apply in the mixing zone.]

FRANK DICKERSON, Commissioner

CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: September 22, 1989

FILED WITH LRC: September 26, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 1989 at 7 p.m. at the Kentucky State University Administrative Services Building Auditorium, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 23, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Persons not wishing to attend the public hearing may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or to provide written comments on the proposed administrative regulation to: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lewis G. Miller

(1) Type and number of entities affected: Generally the entities affected by this regulation include: (1) entities required to treat wastewater (the regulated public); (2) fishing and recreational enthusiasts; and (3) the general public. A more detailed description of entities affected is contained in the regulatory impact analysis prepared for 401 KAR 5:026, Classification of waters, which is a companion regulation to this one.

(a) Direct and indirect costs or savings to those affected:

1. First year: In the short run, no additional costs to the regulated community should result from this regulation. New definitions and wording have been added to various sections to clarify existing interpretations and to be consistent with 40 CFR Pt. 131, pertaining to state water quality standards. It is the implementation of these provisions which have associated costs or savings. These are discussed in the regulatory impact analyses in 401 KAR 5:026 and 401 KAR 5:031.

2. Continuing costs or savings: New definitions and wording have been added to various sections to clarify existing interpretations. Changes to the nondegradation section were made to be consistent with 40 CFR Pt. 131. As a consequence costs and savings are not directly affected by these amendments. Refer to the regulatory impact analyses for 401 KAR 5:026 and 401 KAR 5:031 for costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None determined.

(b) Reporting and paperwork requirements: This regulation does not contain any reporting or paperwork requirements. The regulation specifies general provisions to guide the Commonwealth's water quality standards program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Changes as specified in this regulation will have no effect on the operation or costs of the Natural Resources and Environmental Protection Cabinet. The cabinet has already implemented the requirements of this regulation and has internalized associated costs with normal budget appropriations. This regulation as it relates to the operation of the cabinet does not change the basis for routine procedures involved in managing construction grants, permitting, compliance monitoring or enforcement.

2. Continuing costs or savings: Same as (2)(a) above.

3. Additional factors increasing or decreasing costs: None determined.

(b) Reporting and paperwork requirements: The regulation will not affect the amount of paperwork of the Natural Resources and Environmental Protection Cabinet. Again, the regulation establishes general provisions for guiding the water quality standards program.

(3) Assessment of anticipated effect on state and local revenues: Changes to this regulation will not by themselves have an effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Nondegradation: In amending 401 KAR 5:029, the following

statements were included regarding allowance of water quality degradation in waters which surpass standards (are of higher quality). In allowing lower water quality, the cabinet shall assure water quality adequate to fully protect existing uses and that the most stringent statutory and regulatory controls for waste treatment be employed by all new and existing point sources and that nonpoint sources of pollutants be controlled by application of best management practices. Alternative wording is not warranted as these statements correspond to federal and state requirements to maintain and protect designated water uses while allowing for economic and social development.

Mixing Zones: In adopting the terminology "acute criteria" (in place of 96-hours LC₅₀), the cabinet is addressing two (2) factors: (1) current criteria are based on a variety of toxicity data (including and in addition to 96-hour LC₅₀ data) and (2) the cabinet is proposing new acute criteria to protect aquatic life uses. Alternatives to the term "acute criteria" are not warranted because there are no scientifically justified alternatives and the concept of limiting pollution in mixing zones is necessary to implement KRS 224.020. Additionally, certain minor changes such as those relating to the zone of initial dilution were made to clarify existing requirements or practices of the state as they relate to the regulated community. Alternatives do not exist to these changes because they were made to clarify existing requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, administrative regulations or government policies were found to be in conflict, overlapping or in duplication of this regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: Persons reviewing this regulation are encouraged to review the RIA prepared for 401 KAR 5:031 and 401 KAR 5:026. Regulation 401 KAR 5:026, this regulation, and 401 KAR 5:031 are companion regulations. Regulation 401 KAR 5:026 establishes legitimate stream uses; this regulation sets out general provisions for all wastewater dischargers; and 401 KAR 5:031 specifies numerical and narrative criteria that must be maintained to protect legitimate stream uses. Each regulation is dependent on the others and the resulting impacts are similar, if not the same. Changes to this regulation were made to add clarity to existing definitions, to add new definitions for clearer understanding of regulatory intent and to explain mixing zone requirements. The nondegradation revisions were made to reflect antidegradation language in federal water quality standards regulations.

TIERING: Was tiering applied? No. Tiering was not applied since the regulation affects all discharges into surface waters of the Commonwealth, irrespective of facility ownership, capacity, or unit process or treatment employed.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 33 U.S.C.A. Section 1313; 40 CFR Part 131.

2. State compliance standards. The proposed amendments to the above regulation are the result of Kentucky's triennial review of its water quality standards. The nondegradation policy has been clarified to state that if quality in waters which exceed minimum criteria for support of propagation of fish, shellfish, wildlife and recreation is lowered to accommodate important economic or social development, that the existing uses shall be fully protected. Protection will be provided by utilizing the most stringent statutory and regulatory controls for waste treatment by all new and existing point sources and by application of best management practices for nonpoint sources of pollutants. Language relating to mixing zones has been amended to clarify how water quality standards will be applied. Mixing zones are allowed, only if assigned to a discharge by the cabinet. Zones of initial dilution are likewise allowed at the discretion of the cabinet. Concentrations of toxic substances which exceed the acute criteria for the protection of aquatic life are not allowed in a mixing zone or in a discharge unless a zone of initial dilution is assigned. The allowable concentration of toxic substances is limited to one-third the acute criteria at the edge of an assigned zone of initial dilution. Concentration limits have been placed on toxic pollutants at the edge of the mixing zone for the protection of human health from the consumption of fish tissue. Amendments have been made to other provisions for the sake of clarity. Definitions have been amended or added for use in understanding the water quality standards.

3. Minimum or uniform standards contained in the federal mandate. 33 U.S.C.A. section 1313 and 40 CFR Part 131 require that states review, and revise if appropriate, their water quality standards at least every three years. The water quality standards must include an antidegradation policy consistent with the federal mandate which states:

a. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

b. Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the state finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the state shall assure water quality adequate to protect existing uses fully. Further, the state shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost effective and reasonable best management practices for nonpoint source control.

c. Where high quality waters constitute an outstanding national resource, such as waters of

national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

d. In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing methods shall be consistent with section 316 of the Clean Water Act (33 U.S.C.A. section 1326).

40 CFR Part 131 contains definitions of the terms "criteria", "designated uses" and "water quality standards", which are also defined in this regulation. 40 CFR Part 131 allows the states to include in their water quality standards policies generally affecting their application and implementation, such as mixing zones, low flows and variances but does not suggest any minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation does not impose stricter requirements or responsibilities other than those required by the federal mandate. The federal mandate only requires that state water quality standards consist of designated uses for navigable waters and water quality criteria protective of those uses. The cabinet's definitions and nondegradation policy are consistent with 40 CFR Part 131 and 40 CFR Part 131 does not suggest minimum or uniform standards for mixing zones or other provisions found in this regulation. The federal mandate also requires triennial review of water quality standards. The cabinet is complying with that mandate without imposing stricter requirements or other responsibilities.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No applicable because this regulation does not contain stricter requirements or responsibilities other than those required by the federal mandate.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect public water supply and wastewater treatment divisions of local government.

3. State the aspect or service of local government to which this administrative regulation relates. Public water supply and wastewater treatment services of local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation provides definitions for 401 KAR 5:026 and 401 KAR 5:031. Mixing zone and antidegradation policies of the cabinet are also provided. Local governments will be affected as stated in the fiscal note for 401 KAR 5:026.

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Proposed Amendment)

401 KAR 5:031. Surface water standards.

RELATES TO: KRS Chapter 224

STATUTORY AUTHORITY: KRS 224.020, 224.033, 224.034, 224.037, 224.060, 33 U.S.C. 1313

NECESSITY AND FUNCTION: This regulation sets forth water quality standards which consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These standards are minimum criteria which apply to all surface waters in order to maintain and protect them for designated uses. Criteria for nutrients are recognized and included. These water quality standards are established to protect public health and welfare, protect and enhance the quality of water, and fulfill federal and state requirements for the establishment of water quality standards. These water quality standards are subject to periodic review and revision in accordance with federal and state laws. Definitions for terms used in this regulation are found in 401 KAR 5:029.

Section 1. Nutrient Limits. (1) In lakes, surface impoundments and their tributaries, and other surface waters where eutrophication problems may exist, nitrogen, phosphorus, carbon, and contributing trace element discharges will be limited as appropriate by the cabinet.

(2) The affected surface waters will be designated as nutrient limited.

Section 2. Minimum Criteria Applicable to All Surface Waters. (1) The following minimum water quality criteria are applicable to all surface waters including mixing zones, with the exception that toxicity to aquatic life in mixing zones shall be subject to the provisions of [specified in] 401 KAR 5:029, Section 5[(2)]. Surface waters shall not be aesthetically or otherwise degraded by substances that:

(a) [(1)] Settle to form objectionable deposits;

(b) [(2)] Float as debris, scum, oil, or other matter to form a nuisance;

(c) [(3)] Produce objectionable color, odor, taste, or turbidity;

(d) [(4)] Injure, are chronically or acutely [be] toxic to or produce adverse physiological or behavioral responses in humans, animals, fish and other aquatic life;

(e) [(5)] Produce undesirable aquatic life or result in the dominance of nuisance species;

(f) Cause fish flesh tainting (the concentration of all phenolic compounds which cause fish flesh tainting shall not exceed five (5) ug/l as an instream value);

(g) [(6)] Cause the following changes in radionuclides:

1. [(a) Cause] The gross total alpha particle activity (including radium-226 but excluding radon [radium] and uranium) to exceed fifteen (15) pCi/l;

2. [(b) Cause] Combined radium-226 and radium-228 to exceed five (5) pCi/l (specific determinations of radium-226 and radium-228 are not necessary if dissolved gross alpha particle

activity does not exceed five (5) pCi/l);

3. [(c) Cause] The concentration of total gross beta particle activity to exceed fifty (50) pCi/l;

4. [(d) Cause] The concentration of tritium to exceed 20,000 pCi/l;

5. [(e) Cause] The concentration of total Strontium-90 to exceed eight (8) pCi/l.

(2) The following criteria are applicable to all surface water outside designated mixing zones except for those points where water is withdrawn for domestic water supply use. They are established for the protection of human health from the consumption of fish tissue, and shall not be exceeded. For those substances associated with a cancer risk, an acceptable risk level of no more than one (1) additional cancer case in a population of 1,000,000 people (10^{-6}) will be utilized to establish the allowable concentration.

Table 1.
Water Quality Criteria for Protection of
Human Health from the Consumption
of Fish Tissue

Substances not Linked to Cancer	Concentration (ug/l)
<u>Metals¹</u>	
Antimony	45.000
Chromium (III)	3.433.000
Mercury	0.146
Nickel	100
Thallium	48

Organics

Acrolein	780
1,2,4,5-tetrachlorobenzene	48
Pentachlorobenzene	85
1,1,1-trichloroethane	1,030.000
bis(2-chloroisopropyl) ether	4.360
Dichlorobenzenes	2.600
Dichloropropenes	14.100
Endosulfan	159
Ethylbenzene	3.280
Fluoranthene	54
Isophorone	520.000
2,4-dinitro-o-cresol	765
Dinitrophenol	14.300
Dibutyl phthalate	154.000
Diethyl Phthalate	1.800.000
Di-2-ethylhexyl phthalate	50.000
Dimethyl phthalate	2.900.000
Toluene	424.000

Substances Linked to Cancer

<u>Metals¹</u>	
Beryllium	0.117

Organics

Acrylonitrile	0.65
Aldrin	.000079
Benzene	40.0
Benzidine	.00053
Carbon tetrachloride	6.94
Chlordane	.00048
Hexachlorobenzene	.00074
1,2-dichloroethane	243
1,1,2-trichloroethane	41.8

1,1,2,2-tetrachloroethane	10.7
Hexachloroethane	8.74
2,4,6-trichlorophenol	3.6
bis(2-chloroethyl) ether	1.36
Chloroform	15.7
DDT	0.000024
Dichlorobenzidine	0.02
1,1-dichloroethylene	1.85
Dieldrin	0.000076
2,4-dinitrotoluene	9.1
Dioxin (2,3,7,8-TCDD)	0.00000014
Diphenylhydrazine	0.56
Halomethanes	15.7
Heptachlor	0.00029
Hexachlorobutadiene	50.0
alpha Hexachlorocyclohexane (HCH)	0.031
beta HCH	0.0547
gamma HCH (lindane)	0.0625
Technical HCH	0.0414
N-nitrosodiethylamine	1.24
N-nitrosodimethylamine	16.0
N-nitrosodibutylamine	0.587
N-nitrosodiphenylamine	16.1
N-nitrosopyrrolidine	91.9
Polychlorinated Biphenyls (PCBs)	0.000079
Polynuclear Aromatic Hydrocarbons (PAHs)	0.0311
Tetrachloroethylene	8.85
Toxaphene	0.00073
Trichloroethylene	80.7
Vinyl Chloride	525
Total recoverable form measured in an unfiltered sample	

Section 3. Use Classifications and Associated Criteria. (1) Surface waters may be designated as having one (1) or more of the following legitimate uses and associated use criteria. The classifications in Sections 4, 5, 6, and 7 of this regulation include the most common usage of surface waters within the Commonwealth. Nothing in this regulation shall be construed to prohibit or impair the legitimate beneficial uses of these waters. The criteria in Section 2 of this regulation and the following [indicated] use criteria represent minimum conditions necessary to protect [designated] surface waters for the indicated [that] use and to provide for the protection of human health from fish consumption or a combination of fish and water consumption.

(2) On occasion surface water quality may be outside of the limits established to protect designated uses because of natural conditions. When this condition occurs during periods when stream flows are below the [low] flow which is used by the cabinet to establish effluent limits for wastewater treatment facilities [consistent with the definition contained in 401 KAR 5:029, Section 1(1)(n)], a discharger shall not be considered a contributor to in-stream violations of water quality standards, provided that treatment in compliance with permit requirements is maintained.

(3) Governing flows for water quality-based permits. The following stream flows are to be utilized when deriving KPDES permit limitations for the protection of surface waters for the listed uses and purposes.

(a) Aquatic life protection - $7Q_{10}$.

(b) Water-based recreation protection - $7Q_{10}$.

(c) Domestic water supply protection - harmonic mean for cancer-linked substances, $7Q_{10}$ for noncancer-linked substances, determined at points of withdrawal.

(d) Human health protection from fish consumption only - harmonic mean for cancer-linked substances, 70/10 for noncancer-linked substances.

(e) Protection of aesthetics and for changes in radionuclides - 70/10-

Section 4. Aquatic Life. (1) Warm water aquatic habitat. The following parameters and associated criteria shall apply [are] for the protection of productive warm water aquatic communities, fowl, animal wildlife, arboreous growth, agricultural, and industrial uses:

(a) Natural alkalinity as CaCO_3 shall not be reduced by more than twenty-five (25) percent. Where natural alkalinity is below twenty (20) mg/l CaCO_3 , no reduction below the natural level is allowed. Alkalinity shall not be reduced or increased to a degree which may adversely affect the aquatic community.

(b) pH shall not be less than six (6.0) nor more than nine (9.0) and shall not fluctuate more than one (1) unit over a period of twenty-four (24) hours.

(c) Flow shall not be altered to a degree which will adversely affect the aquatic community.

(d) Temperature shall not exceed thirty-one and seven-tenths (31.7) degrees Celsius (eighty-nine (89) degrees Fahrenheit).

1. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other than natural causes shall be maintained.

2. The cabinet will determine allowable surface water temperatures on a site-specific basis utilizing available data which shall be based on the effects of temperature on the aquatic biota which utilize specific surface waters of the Commonwealth and which may be affected by person-induced temperature changes. Effects on downstream uses will also be considered in determining site-specific temperatures. As a guideline, the water temperature for all surface waters shall comply with the limits shown in the following table:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80
June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

3. A successful demonstration concerning thermal discharge limits carried out under Section 316(a) of the Clean Water Act shall constitute compliance with the temperature requirements of this subsection. A successful

demonstration assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in or on the water into which the discharge is made.

(e) Dissolved oxygen.

1. Dissolved oxygen shall be maintained at a minimum concentration of five (5) mg/l daily average; [and] at no time shall [should] the instantaneous minimum be less than four (4) mg/l.

2. The dissolved oxygen concentration shall be measured at middepth in waters having a total depth of ten (10) feet or less and at representative depths in other waters.

(f) Solids.

1. Total dissolved solids. Total dissolved solids shall not be changed to the extent that the indigenous aquatic community is adversely affected.

2. Total suspended solids. Total suspended solids shall not be changed to the extent that the indigenous aquatic community is adversely affected. [The addition of settleable solids that may adversely alter the stream bottom is prohibited.]

3. Settleable solids. The addition of settleable solids that may adversely alter the stream bottom is prohibited.

(g) Ammonia. The concentration of the un-ionized form shall not be greater than 0.05 mg/l at any time instream after mixing [as illustrated in the table entitled "In-stream Ammonia-N Concentrations," filed herein by reference. Copies may be obtained from the Division of Water, Fort Boone Plaza, 18 Reilly Road, Frankfort, Kentucky 40601].

[(h) Phenolic compounds. The concentration of phenolic compounds shall not exceed five (5) ug/l as an in-stream value.]

(h) [(i)] Toxics.

1. The allowable in-stream concentration of toxic substances or whole effluents containing toxic substances which are noncumulative or nonpersistent (half-life of less than ninety-six (96) hours) shall not exceed the no observed effect level (NOEL) or one-tenth (0.1) of the ninety-six (96) hour median lethal concentration (LC50) of a representative indigenous or indicator aquatic organism(s) or exceed a chronic toxicity unit of one (1), whichever is more appropriate.

2. The allowable in-stream concentration of toxic substances or whole effluents containing toxic substances which are bioaccumulative or persistent, including pesticides, when not specified elsewhere in this section, shall not exceed the NOEL or 0.01 of the ninety-six (96) hour median lethal concentration (LC50) of a representative indigenous or indicator aquatic organism(s) or exceed a chronic toxicity unit of one (1), whichever is more appropriate.

3. In the absence of acute criteria for substances listed in Table 2 or for other substances known to be toxic but not listed in this regulation, or for whole effluents which are acutely toxic, the allowable concentration shall not exceed the LC_{10} or one-third (1/3) LC_{50} concentration derived from bioassay tests on a representative indigenous or indicator aquatic organism(s) or exceed an acute toxicity unit of one (1), whichever is more appropriate.

4. [3.] Where specific application factors have been determined for a toxic substance or whole effluent such as an acute/chronic ratio or water effect ratio, they may be used instead of the one-tenth (0.1) and 0.01 factors listed in

this subsection upon approval by the cabinet.

5. [4.] Allowable in-stream concentrations for specific substances (acute and chronic criteria) [parameters] are listed [outlined] in Table 2 [I]. These concentrations [values] are based on protecting aquatic life from acute and chronic toxicity, and shall not be exceeded.

Table 2 [I]
Warm water Aquatic Habitat Criteria¹

<u>Metals</u>		
<u>Substance</u>	<u>Acute Criteria</u>	<u>Chronic Criteria</u>
[Parameter		Concentration]
Arsenic		50 ug/l
<u>Arsenic (III)</u>	<u>360 ug/l</u>	<u>190 ug/l</u>
Beryllium		11 ug/l soft water ²
		1100 ug/l hard water ²
Cadmium (ug/l)	<u>e(1.128(ln Hard*)-3.828)</u>	<u>e(0.7852(ln Hard)-3.490)</u>
		[4.0 ug/l soft water ²]
		[12.0 ug/l hard water ²]
[Chlordane		0.0043 ug/l]
[Chloride		600 mg/l]
[Chlorine, total residual]		10 ug/l]
Chromium		100 ug/l
<u>Chromium (III) (ug/l)</u>	<u>e(0.8190(ln Hard)+3.688)</u>	<u>e(0.8190(ln Hard)+1.561)</u>
<u>Chromium (VI)</u>	<u>16 ug/l</u>	<u>11 ug/l</u>
<u>Copper (ug/l)</u>	<u>e(.9422(ln Hard)-1.464)</u>	<u>e(.8545(ln Hard)-1.465)</u>
[Cyanide, Free		5 ug/l]
[Hydrogen Sulfide (undissociated)]		2 ug/l]
Iron	<u>4.0 mg/l</u>	1.0 mg/l ³
<u>Lead (ug/l)</u>	<u>e(1.273(ln Hard)-1.460)</u>	<u>e(1.273(ln Hard)-4.705)</u>
Mercury	<u>2.4 ug/l</u>	0.012 ug/l
<u>Nickel (ug/l)</u>	<u>e(0.8473(ln Hard)+3.3612)</u>	<u>e(0.8460(ln Hard)+1.1645)</u>
[Phthalate Esters		3 ug/l]
[Polychlorinated Biphenyls]		0.0014 ug/l]
Selenium	<u>20 ug/l</u>	<u>5 ug/l</u>
<u>Silver (ug/l)</u>	<u>e(1.72(ln Hard)-6.52)</u>	
Zinc (ug/l)	<u>e(0.8473(ln Hard)+0.8604)</u>	<u>e(0.8473(ln Hard)+0.7614)</u>
		[47 ug/l]

Organics

Aldrin	<u>3.0 ug/l</u>	
Chlordane	<u>2.4 ug/l</u>	<u>0.0043 ug/l</u>
Chloropyrifos	<u>0.083 ug/l</u>	<u>0.041 ug/l</u>
DDT	<u>1.1 ug/l</u>	<u>0.001 ug/l</u>
Dieldrin	<u>2.5 ug/l</u>	<u>0.0019 ug/l</u>
Endosulfan	<u>0.22 ug/l</u>	<u>0.056 ug/l</u>
Endrin	<u>0.18 ug/l</u>	<u>0.0023 ug/l</u>
Heptachlor	<u>0.52 ug/l</u>	<u>0.0038 ug/l</u>
Lindane	<u>2.0 ug/l</u>	<u>0.080 ug/l</u>
Parathion	<u>0.065 ug/l</u>	<u>0.013 ug/l</u>
Pentachloro-phenol (ug/l)	<u>e(1.005(pH)-4.830)</u>	<u>e(1.005(pH)-5.290)</u>
Phthalate esters		<u>3 ug/l</u>

Polychlorinated Biphenyls (PCBs)		<u>0.0014 ug/l</u>
Toxaphene	<u>0.73 ug/l</u>	<u>0.0002 ug/l</u>

Others

Chloride	<u>1200 mg/l</u>	<u>600 mg/l</u>
Chlorine, total residual	<u>19 ug/l</u>	<u>10 ug/l</u>
Cyanide, free	<u>22 ug/l</u>	<u>5 ug/l</u>
Hydrogen sulfide (undissociated)		<u>2 ug/l</u>

¹Metal criteria, for purposes of this regulation, are total recoverable metals to be measured in an unfiltered sample.

²Soft water has an equivalent concentration of calcium carbonate (CaCO₃) of zero to seventy-five (75) mg/l, and hard water has an equivalent concentration of calcium carbonate (CaCO₃) of over seventy-five (75) mg/l.

³The chronic criterion for [daily average] total recoverable iron [concentration] shall not exceed three and five-tenths (3.5) mg/l when it is established that there will be no damage to aquatic life.

*Hard = Hardness as mg/l CaCO₃.

(2) Cold water aquatic habitat. The following parameters and their associated criteria are for the protection of productive cold water aquatic communities and streams which support trout populations (whether self-sustaining or reproducing) on a year-round basis. All of the criteria adopted for the protection of warm water aquatic life also apply to the protection of cold water habitats with the following additions:

(a) Dissolved oxygen.

1. A minimum concentration of six (6) mg/l as a daily average and five (5) mg/l as an instantaneous minimum shall be maintained at all times.

2. In impoundments which support trout, the concentration of dissolved oxygen in waters below the epilimnion shall be kept consistent with natural water quality.

(b) Temperature. Water temperature shall not be increased through man's activities above the natural seasonal temperatures.

(c) Total residual chlorine. The total residual chlorine shall not exceed two (2) ug/l as an in-stream value.

Section 5. Domestic Water Supply Use. Maximum allowable in-stream concentrations for specific substances [parameters], to be applicable at the point of withdrawal for use for domestic water supply from surface water sources are specified in Table 3 and shall not be exceeded. [II:]

Table 3 [II]
Domestic Water Supply Source Criteria¹

<u>Substances Not Linked to Cancer</u>	<u>Concentration</u>
[Parameter]	
<u>Metals</u>	
Antimony	<u>0.146 mg/l</u>
Barium	<u>1 mg/l</u>
Cadmium	<u>0.010 mg/l</u>
[Chloride	<u>250 mg/l]</u>
Chromium	<u>0.05 mg/l</u>
Chromium (III)	<u>170 mg/l</u>

[Color	75 Platinum-Cobalt Color Units]		<u>Organics (ug/l)</u>	
Copper	1 mg/l		Acrylonitrile	0.058
[Fecal Coliform	2000/100 ml (Geometric mean)]		Aldrin	0.000074
[Fluoride	1 mg/l]		Asbestos (fibers/liter)	30.000
Lead	0.05 mg/l		Benzene	0.66
Manganese	0.05 mg/l		Benzidine	0.00012
Mercury	0.144 ug/l		Carbon tetrachloride	0.40
[Methylene Blue Active Substances	0.5 mg/l]		Chlordane	0.00046
[Nitrate ($\text{NO}_3\text{-N}$, as Total)]	10 mg/l]		Hexachlorobenzene	0.00072
Nickel	13.4 ug/l		1,2-dichloroethane	0.94
Selenium	0.01 mg/l		1,1,2-trichloroethane	0.60
Silver	0.05 mg/l		1,1,2,2-tetrachloroethane	0.17
Thallium	0.013 mg/l		Hexachloroethane	1.9
[Sulfate	250 mg/l]		2,4,6-trichlorophenol	1.2
[Total Dissolved Solids	750 mg/l]		bis(2-chloroethyl) ether	0.03
			Chloroform	0.19
			DDT	0.000024
			Dichlorobenzidine	0.01
			1,1-dichloroethylene	0.033
			Dieldrin	0.000071
			2,4-dinitrotoluene	0.11
			Dioxin (2,3,7,8-TCDD)	0.000000013
			Diphenylhydrazine	0.042
			Halomethanes	0.19
			Heptachlor	0.00028
			Hexachlorobutadiene	0.45
			alpha Hexachlorocyclohexane (HCH)	0.009
			beta HCH	0.016
			gamma HCH (Lindane)	0.019
			Technical HCH	0.012
			N-nitrosodiethylamine	0.0008
			N-nitrosodimethylamine	0.0014
			N-nitrosodibutylamine	0.0064
			N-nitrosodiphenylamine	4.9
			N-nitrosopyrrolidine	0.016
			Polychlorinated Biphenyls (PCBs)	0.000079
			Polynuclear Aromatic Hydrocarbons (PAHs)	0.0028
			Tetrachloroethylene	0.8
			Toxaphene	0.00071
			Trichloroethylene	2.7
			Vinyl Chloride	2.0

^See note 1 in Table 2. [II]

Organics

Acrolein	0.320 mg/l
Monochlorobenzene	0.488 mg/l
1-2-4-5-tetrachlorobenzene	0.038 mg/l
Pentachlorobenzene	0.074 mg/l
1,1,1-trichloroethane	18.4 mg/l
2,4,5-trichlorophenol	2.6 mg/l
Bis(2-chloroisopropyl) ether	0.0347 mg/l
Dichlorobenzenes	0.400 mg/l
2,4-dichlorophenol	3.090 mg/l
Dichloropropenes	0.087 mg/l
Endosulfan	0.074 mg/l
Endrin	0.001 mg/l
Ethylbenzene	1.4 mg/l
Fluoranthene	0.042 mg/l
Hexachlorocyclopentadiene	0.206 mg/l
Isophorone	5.2 mg/l
Nitrobenzene	19.8 mg/l
2-4-dinitro-o-cresol	0.0134 mg/l
Dinitrophenol	0.070 mg/l
Pentachlorophenol	1.0 mg/l
Phenol	3.5 mg/l
Dibutyl phthalate	34 mg/l
Diethyl phthalate	350 mg/l
Di-2-ethylhexyl phthalate	15 mg/l
Dimethyl phthalate	313 mg/l
Toluene	14.3 mg/l

Others

Chloride	250 mg/l
Color	75 Platinum Cobalt Color Units
Cyanide (free)	0.200 mg/l
Fecal Coliform	2000/100 ml Geometric mean)
Fluoride	1.0 mg/l
Methylene Blue Active Substances	0.5 mg/l
Nitrate ($\text{NO}_3\text{-N}$)	10 mg/l
Sulfate	250 mg/l
Total Dissolved Solids	750 mg/l

Substances Linked to Cancer

Beryllium	0.0068
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Section 6. Recreational Waters. (1) Primary contact recreation water. Primary contact recreation waters are waters suitable for full body contact recreation during the recreation season of May 1 through October 31. Criteria for primary contact recreation waters are listed below:

- (a) Fecal coliform content shall not exceed 200 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples taken during the month; nor exceed 400 colonies per 100 ml [more than] twenty (20) percent or more of samples taken during the month; these limits applicable during the recreation season. Fecal coliform criteria listed in subsection (2)(a) of this section apply during the remainder of year.
- (b) pH shall be between six (6.0) to nine (9.0) and shall not change more than one (1) unit within this range over a period of twenty-four (24) hours.
- (2) Secondary contact recreation waters. Secondary contact recreation waters are waters suitable for partial body contact recreation with minimal threat to public health due to water quality. The following criteria apply to waters classified for secondary contact recreation use during the entire year:
 - (a) Fecal coliform content shall not ex-

1000 colonies per 100 ml as a monthly geometric mean based on not less than five (5) samples per month; nor exceed 2000 colonies per 100 ml in [more than] twenty (20) percent or more of all samples taken during the month.

(b) pH shall be between six (6.0) to nine (9.0) and shall not change more than one (1) pH unit within this range over a period of twenty-four (24) hours.

Section 7. Outstanding Resource Waters. This classification category includes certain unique waters of the Commonwealth.

(1) Water for inclusion.

(a) Automatic inclusion. The following surface waters shall automatically be included in this category:

1. Waters designated under the Kentucky Wild Rivers Act, KRS 146.200-146.360.

2. Waters designated under the Federal Wild and Scenic Rivers Act, 16 U.S.C. 1271 et seq. and high quality waters constituting an outstanding national resource water.

3. Waters identified under the Kentucky Nature Preserves Act, KRS 146.410-146.530, which are contained within a formally dedicated nature preserve or are published in the registry of natural areas and concurred upon by the cabinet.

4. Waters that support federally recognized endangered or threatened species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.

(b) Permissible consideration. Other surface waters may be included in this category as determined by the cabinet if [providing]:

1. The surface waters flow through or are bounded by state or federal forest land, or are of exceptional aesthetic or ecological value or are within the boundaries of national, state, or local government parks, or are a part of a unique geological or historical area recognized by state or federal designation; or

2. They are a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and possess outstanding water quality characteristics; or two (2) of the following criteria:

a. Support a diverse or unique native aquatic flora or fauna.

b. Possess physical or chemical characteristics that provide an unusual and uncommon aquatic habitat.

c. Provides a unique aquatic environment within a physiographic region.

(2) Outstanding resource waters protection [designation]: The classification of certain waters as outstanding resource waters shall fairly and fully reflect those aspects of the waters for which the classification is proposed. The cabinet will [shall] determine water quality criteria for these waters as follows:

(a) At a minimum, the criteria of Section 2 of this regulation and the appropriate criteria associated with the stream use classification assignments in 401 KAR 5:026, [Section 7,] are applicable to these waters.

(b) Where the values identified for an outstanding resource water are dependent upon or related to in-stream water quality, the cabinet will [shall] review existing water quality criteria and determine whether additional criteria or more stringent criteria are necessary for protection, and evaluate the need for the development of additional data upon which to base the determination. Existing water

quality and habitat shall be maintained and protected in those waters designated as outstanding resource waters which support federally threatened and endangered species of aquatic organisms, unless it can be demonstrated to the satisfaction of the cabinet, that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species which the water supports.

(c) "Water quality shall be maintained and protected in waters which constitute an outstanding national resource. The cabinet may approve temporary or short-term changes in water quality if the changes to the waters in question have no demonstrable impact on the ability of the waters to support this use."

(d) Adoption of more protective criteria in accordance with this section will [shall] be listed with the respective stream segment in 401 KAR 5:026, [Section 7,] and will be promulgated as an [subject to promulgation under Kentucky's] administrative regulation pursuant to KRS Chapter 13A [rule-making procedures].

(3) Determination of classification.

(a) Any person may present a proposal to classify certain waters under this section. Documentation requirements in support of an outstanding resource water proposal shall contain those elements outlined in 401 KAR 5:026, Section 5(1) through (8).

(b) The cabinet will [shall] review the proposal and supporting documentation to determine whether the proposed waters qualify as outstanding resource waters within the criteria established by this regulation. The cabinet will [shall] document the determination to deny or to propose reclassification, and a copy of the [such] decision will [shall] be served upon the petitioner and other interested parties.

(c) After considering all of the pertinent data, a reclassification, if appropriate, will [shall] be made pursuant to 401 KAR 5:026[Section 6].

Section 8. Water Quality Criteria for the Main Stem of the Ohio River. The following criteria apply to the main stem of the Ohio River from its juncture with the Big Sandy River at River Mile 317.1 [664.15] to its confluence with the Mississippi River, and shall not be exceeded: these waters are subject to all applicable provisions of 401 KAR 5:026, 401 KAR 5:029, and this regulation.

(1) Dissolved oxygen. Concentrations shall average at least five (5.0) mg/l per calendar day and shall not be less than four (4.0) mg/l at any time provided that a minimum of five and one-tenth (5.1) mg/l at any time is maintained during the April 15 - June 15 spawning season.

(2) Temperature.

(a) Allowable stream temperatures are:

Month/Date	Period Average (°F)	Instantaneous Maximum (°F)
January 1-31	45	50
February 1-29	45	50
March 1-15	51	56
March 16-31	54	59
April 1-15	58	64
April 16-30	64	69
May 1-15	68	73
May 16-31	75	80

June 1-15	80	85
June 16-30	83	87
July 1-31	84	89
August 1-31	84	89
September 1-15	84	87
September 16-30	82	86
October 1-15	77	82
October 16-31	72	77
November 1-30	67	72
December 1-31	52	57

(b) A successful demonstration conducted for thermal discharge limits under Section 316(a) of the Clean Water Act will constitute compliance with these temperature criteria.

(3) Total dissolved solids: not to exceed 500 mg/l as a monthly average, nor exceed 750 mg/l at any time. Equivalent twenty-five (25) degrees Centigrade specific conductance values are 800 and 1200 micromhos/cm respectively.

(4) Maximum allowable in-stream concentrations for specific parameters are given below. Metal concentrations are total recoverable values except hexavalent chromium which is dissolved [unless otherwise listed].

Parameter Concentration (mg/l)

Arsenic	.05
Barium	1.0
Chloride	250
Fluoride	1.0
Nitrite + Nitrate Nitrogen	10.0
Nitrite-Nitrogen	1.0
Phenolics	.005
Sulfate	250

[Chromium (hexavalent)]	0.05
Cyanide (total)	0.025
Lead (dissolved)	0.05
Nitrite-Nitrate-N	10.00
Nitrite-N	1.0
Phenolic compounds	0.01]

[Copper: When total hardness as calcium carbonate is: Allowable concentration is:

50	0.012
80	0.018
100	0.022
160	0.034
200	0.043]

[Zinc: When total hardness as calcium carbonate is: Allowable concentration is:

0-80	0.040
81-120	0.055
121-160	0.070
161-180	0.095
181-200	0.115]

Parameter	Chronic Criteria Concentration ug/l	Acute Criteria Concentration ug/l
Cadmium	e(.7852(1n Hard)-3.490)	e(1.128(1n Hard)-3.828)
Chromium (hexavalent)	11	16
Copper	e(.8545(1n Hard)-1.465)	e(.9422(1n Hard)-1.464)
Cyanide (free)	5	22

Lead	e(1.273(1n Hard)-4.705)	e(1.273(1n Hard)-1.460)
Mercury	.012	2.4
Zinc	e(.8473(1n Hard)+.7614)	e(.8473(1n Hard)+.8604)

(5) The net discharge of aldrin, dieldrin, DDT, including DDD and DDE, endrin, toxaphene, benzidine, and PCBs is prohibited.

Section 9. Exceptions to Criteria. (1) The cabinet may grant exceptions to the [classification] criteria contained in Sections 2, 4, 5, 6 and 7 of this regulation upon demonstration by an applicant that maintenance of applicable water quality criteria are not attainable or scientifically valid but the use classification is still appropriate. This determination will [must] be made on a case-by-case basis with respect to a specific surface water [stream segment] following an analysis for each area.

(2) The analysis shall [must] show that the water quality criteria cannot be reasonably achieved either on a seasonal or year-round basis due to natural conditions, or site-specific factors differing from the conditions used to derive criteria in Sections 2, 4, 5, 6, [and] 7, and 8 of this regulation, or a [the] demonstration that meeting the criteria would cause substantial and widespread economic and social impact. Site-specific criteria shall be developed by the applicant utilizing toxicity tests, indicator organisms, and application factors that are consistent with those outlined in "Water Quality Standards Handbook" (EPA, 1983). In addition, an applicant shall [must] supply the documentation listed in Section 5 of 401 KAR 5:026.

(3) Before [In] granting an exception to water quality criteria, the cabinet shall ensure that the water quality standards of downstream waters are attained and maintained.

(4) All exceptions to water quality criteria will be subject to review at least every three (3) years.

(5) Upon completing a review and the procedures for promulgation under administrative rule-making, all exceptions to water quality criteria shall be listed with the respective stream segment in Section 7 of 401 KAR 5:026.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary

APPROVED BY AGENCY: September 22, 1989

FILED WITH LRC: September 26, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 1989 at 7 p.m. at the Kentucky State University Administrative Services Building Auditorium, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 23, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Persons not wishing to attend the public hearing may submit written comments on the proposed administrative regulation. Send written

notification of intent to attend the public hearing or to provide written comments on the proposed administrative regulation to: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Lewis G. Miller

(1) Type and number of entities affected: Generally the entities affected by this regulation include: (1) entities required to treat wastewater which discharges into surface waters of the Commonwealth (the regulated public); (2) commercial fisheries; (3) fishing and recreational enthusiasts; and (4) the general public.

Regulated Public: Public and private entities who are required to treat wastewater include municipal and industrial wastewater treatment plants, commercial establishments, and other facilities (See Table 1). At the time of this writing, 3,813 entities are affected by various provisions of the regulation as implemented through the cabinet's wastewater discharge permitting programs. These include approximately 1,010 publicly-owned or operated facilities composed of 117 state-owned facilities; 77 federally-owned facilities; 380 county-owned facilities; and 406 facilities owned or operated by Kentucky municipalities or special purpose local governments. Publicly-held facilities include 259 municipal wastewater treatment plants; 22 industries; 17 subdivisions; 341 schools; 210 small sewage treatment plants; 7 landfills; 2 agricultural interests; and 152 water treatment plants. The remaining 2,803 private entities required to treat wastewater consist of 803 industrial treatment systems; 212 subdivisions; 14 schools; 2,803 small sewage treatment plants; 10 landfills; 494 agricultural interests; and 12 water treatment plants.

TABLE 1: Facility Type by Ownership - 1988

FACILITY Type	OWNERSHIP			
	City/Local	Private	County	State
Municipal	245	1	0	0
Industrial ¹	11	803	3	3
Subdivision	14	212	1	0
School	6	14	335	0
Small Sewage ²	8	1257	30	104
Landfill	3	10	4	0
Agricultural	0	494	0	2
Water Plant	119	12	7	8
TOTAL	406	2803	380	117

FACILITY Type	OWNERSHIP			
	Federal	San. Dist.	Miscoded	Totals
Municipal	0	13	1	260
Industrial ¹	5	0	0	825
Subdivision	0	2	0	229
School	0	0	0	355
Small Sewage ²	67	1	0	1467
Landfill	0	0	0	17
Agricultural	0	0	0	496
Water Plant	5	0	13	164
TOTAL	77	16	14	3813

¹Consists of bituminous coal and lignite mining; other mining and quarrying; food and kindred products; chemicals and allied products; petroleum refining; rubber and plastics; stone,

clay and glass manufacturers; primary metal industries; etc.

²Consists of eating and drinking places; real estate; hotels and other lodging places; amusement and recreation services; private households; air, highway, and water transportation services; wholesale trade; food stores; car dealers and service stations; etc.

Source: Kentucky Division of Water, Permit Files, 1988.

General Public and Other Entities: In addition to the regulated public mentioned in the preceding paragraphs, fishing and recreation enthusiasts, commercial fisheries, the aquatic environment of Kentucky, and the general public are affected by this regulation. Basin populations (general public) are presented in Table 2. A large portion of the general population will benefit from maintaining viable fishery resources, water-based recreation, community water supplies and human health.

TABLE 2. 1986 Approximated Population by Major River Basin¹

Basin	Population
Mississippi	51,500
Tennessee	54,500
Cumberland	
(lower basin)	112,600
(upper basin)	326,400
Green	508,300
Salt	391,831
Kentucky	672,150
Licking	349,500
Tygart	31,700
Little Sandy	51,625
Big Sandy	202,525
Ohio	992,725
Total	3,755,356

¹Based on county data provided by the University of Louisville Center for Urban Studies.

Kentucky's 3 million citizens will be impacted in a positive sense by the maintenance of community drinking water supplies derived from surface waters. Numerical criteria for assuring the bacteriological safety and chemical quality of raw surface water sources for domestic use will be applied at the point of withdrawal. Large communities benefiting from the maintenance of surface water supplies include Ashland, Hopkinsville, Owensboro, Lexington, Frankfort, Louisville, Fort Mitchell, Bowling Green, Fort Thomas, Elizabethtown, Paducah, Henderson, and Madisonville. Intermediate size communities include Berea, Richmond, Lebanon, Maysville, Harrodsburg, Mt. Sterling, Greenville, Bardstown, Hartford, Hazard, Pikeville, Somerset, Morehead, Georgetown, Shelbyville, Franklin, Campbellsville, Corbin, Versailles, Jeffersontown, Barbourville, London, Radcliff, Fort Knox, Cynthia, Winchester, Glasgow, Danville, Florence, and Middlesboro. Additionally, many noncommunity surface water supplies serving 23,942 Kentuckians will benefit. These range from many of Kentucky's schools and churches to mobile home parks to

small restaurants and other commercial establishments. A complete listing is available upon request to the Division of Water's Drinking Water Branch.

Recreational activities which will benefit from the maintenance of water quality include sport fishing, boating, water skiing, and canoeing. Fishing licenses were sold to 514,925 Kentucky residents and 117,450 out-of-state residents in 1987. Based on the 1984 Statewide Comprehensive Outdoor Recreation Plan (SCORP), 37.9 percent of Kentucky's population will fish at least one time per year, equaling approximately 1.4 million individuals. Sample results of the 1984 SCORP, which are considered to be statistically reliable at the Area Development District level, also indicate that 29.4, 11.5, and 7.7 percent of the population will participate in boating, water skiing, and canoeing activities, respectively. Taken together, approximately 1.8 million Kentuckians will spend at least one day per year boating, canoeing or water skiing.

Breakdowns for waterfowl hunting and beach swimming as contained in the 1978 SCORP were not included in the updated assessment. Individuals who participate in these activities will also be positively impacted by the regulation.

Kentuckians will also benefit from the maintenance of uncontaminated fish stocks. A study conducted by the Kentucky Department of Fish and Wildlife Resources (Kentucky Fisherman Attitude Survey: 1982) found that 9.2% of sport fishermen statewide felt catching fish for food was the most enjoyable feature about going fishing. Using the number of fishing licenses sold to Kentuckians in 1987, 47,373 persons felt providing fish for table use was enjoyable. This value is a conservative estimate of the number of Kentuckians that consumed fish caught in Kentucky waters by sportsmen in 1987. Commercial production and harvest of food fishes is becoming increasingly important to Kentuckians (see 401 KAR 5:026 Regulatory Impact Analysis), emphasizing the need to maintain the quality of the food fish resource.

(a) Direct and indirect costs or savings to those affected:

1. First year: Regulated Public: No additional costs in the short-run should result above those: (1) already being incurred by wastewater treatment facilities currently meeting their effluent limits; or (2) projected as necessary for the upgrade of wastewater treatment facilities not meeting their effluent limits. Since the proposed modifications do not represent a substantial change from current management assumptions regarding attainable water quality, treatment requirements, and facility compliance, no new costs should result above those already required of and anticipated by various entities affected by this regulation. In interpreting its narrative water quality criteria, the cabinet has previously relied on criteria documents developed by the U.S. Environmental Protection Agency (EPA) in the absence of state numerical criteria. This regulation formally establishes these EPA criteria in state regulations and is not a substantial change which would increase costs above what is currently being required as permits are renewed.

The most significant changes relate to: (1) inclusion of EPA-derived toxics criteria for the protection of human health through the

consumption of fish tissue; (2) the establishment of allowable concentrations of toxic substances associated with cancer, using a risk factor of 10^{-6} ; (3) a statement of flows governing water quality-based permits; (4) modification of existing criteria for the maintenance and protection of aquatic habitat by including U.S. EPA-derived criteria for acute and chronic toxicity; (5) modification of existing toxics criteria to include EPA toxics criteria for the protection of domestic water supplies; and (6) modification of water quality criteria for the main stem of the Ohio River to reflect the Ohio River Valley Water Sanitation Commission's 1987 standards revision.

The adopted standards may prove economically advantageous in certain instances to the regulated public. For example, EPA toxicity derivation formulas using in-stream hardness values are being written into the standards. Acceptance of these formulas may benefit regulated entities, depending on the hardness of the receiving stream and wastewater. As an example, the existing zinc criterion (chronic) is 47 ug/l. Using mean hardness values for the period of record, Table 3 presents derived acute and chronic zinc values. Adoption of the EPA derivation formulas will result in more realistic acute and chronic toxicity values that discharges must meet for maintenance and protection of aquatic life.

This regulation clarifies aquatic life and human health protection criteria for regulated entities through the listing of additional individual criteria. Most toxic criteria were previously covered by narrative criteria. Listing of the criteria addresses the cabinet's interpretation of the mandate in the 1987 amendments to the Federal Clean Water Act.

The 7Q10 flow has historically been used by the cabinet to establish limits on water quality-based permits. This use of 7Q10 flow was previously alluded to in the definition of low flow in 401 KAR 5:029. This is now restated in the regulation for clarity. No new costs are associated with this change. No new costs are associated with the proposal to utilize the harmonic mean flow for establishing discharge limits on cancer-causing substances. This is a greater flow than the 7Q10 and thus allows for more dilution, yet does not increase the cancer risk to the public, as discussed below.

The cabinet is introducing the category of outstanding national resource waters as being included in state outstanding resource waters. No waters have been designated in this use category, so no costs are associated with this inclusion. It was included to comply with federal regulations which recognize this category of high quality waters.

TABLE 3. Zinc Acute and Chronic Toxicity Values Based on U.S. EPA Formulas for the Protection of Aquatic Life

Ambient Monitoring Station	Mean Hardness ¹	Acute Value	Chronic Value
Mayfield Creek - Magee Sprs.	36	49	44
Cumberland River - Cumberland Falls	109	125	114
Kentucky River - Frankfort	136	152	137
Salt River - Shepherdsville	190	202	183

¹Based on period of record - Kentucky Ambient Monitoring Network

Acute Toxicity = $e(0.8473(\ln \text{Hard}) + 0.8604)$

Chronic Toxicity = $e(0.8473(\ln \text{Hard}) + 0.7614)$

Existing Zinc Criteria = 47 ug/l

General Public and Other Entities: Savings to entities affected primarily relate to maintaining domestic water supplies, viable fishing resources, and water-based recreation.

Drinking Water Criteria: The maintenance of domestic water supplies derived from surface sources has been mentioned. Domestic supply and industrial uses are also significant water consumers, withdrawing 355.7 and 175.1 mgd respectively. Kentucky's 3 million citizens will benefit from maintaining water supplies vital for domestic use. Maintenance of those water supplies is also vital for agricultural, power, and industrial uses, and for the sustained economic growth and development of the Commonwealth. The new human health criteria should decrease water treatment costs through the improvement of stream water quality (e.g., discharge effluent will be required to meet more specific criteria for protection of domestic water supplies).

Based on total 1985 surface water withdrawals (3,994.92 mgd) for offstream water uses, thermoelectric usage representing 84.4 percent of the total (3,371.6 mgd), is by far the largest water consumer in the state (Water Use in Kentucky, 1985, U.S. Geological Survey, Water-Resources Investigations Report 88-4043). Agricultural uses withdrew 57.8 mgd. Obviously the quality and quantity of surface waters is a significant factor in the continued viability of Kentucky agriculture. 87 percent of agricultural withdrawals were for livestock watering purposes. The remaining portion was devoted to irrigated crop production. Likewise, the quality of water is crucial to Kentucky's food and beverage processing industry. It is also a concern in other commercial, manufacturing, and industrial purposes.

Aquatic Life, Recreation and Human Health Water Quality Criteria: The water quality program of Kentucky is integral to maintaining and expanding viable fishery resources and water-based recreational opportunities. Basically, the program establishes minimum instream water quality criteria that must be maintained to protect aquatic life and the health and safety of recreation users. In this manner, viable fishing resources and other forms of water-based recreation can be maintained to support Kentucky's growing fishing and tourism industry. The new criteria to protect human health from the consumption of fish tissue will aid in maintaining the Commonwealth's fishery resource by ensuring that fish will be a safe food source.

The value individuals place on leisure and recreation opportunities manifests itself in time, and tangible expenses for transportation, lodging and subsistence, equipment, and other fees. Total expenditures associated with Kentucky's tourism industry in 1987 amounted to \$4.0 billion of which \$2.3 billion were directed expenditures. Additionally, 114,707 individuals were employed in tourism related activities or supporting enterprises. State and local taxes accruing from recreational activities in 1987 amounted to a total of \$283 million (personal communication with Tourism Cabinet).

In Kentucky's major recreational lake regions, the Western Lakes and Lake Cumberland Regions, the Tourism Cabinet (personal communication with Tourism Cabinet) reported that direct expenditures amounted to \$179.4 million and \$120.7 million, respectively. Employment in these regions attributed directly to recreation amounted to 11,104 jobs. The counties of Marshall, McCracken, Russell and Pulaski benefit the most from the tourism dollar in the lake regions.

The above figures represent total tourism expenditures in the state whether water-related or not. Figures provided for the lake regions, however, are principally water-oriented.

To further illustrate the importance of Kentucky's fishery resource, a significant amount of revenue is received by the state, local units of government, and the private sector in the form of privilege fees, licenses, tags, and permits; and expenses associated with bait and tackle, food and lodging, and transportation of in- and out-of-state residents. In 1980 dollars, the U.S. Fish and Wildlife Service stated in its "1980 National Survey of Fishing, Hunting and Wildlife Associated Recreation" report that \$62.8 million were spent for food and lodging, representing a per-sportsman expenditure of approximately \$81.03. Other expenses for all 1980 fishing in the Commonwealth included \$54.9 million in transportation expenses; \$6.7 million in privilege fees; \$5.6 million in licenses, tags, and permits; and \$28.3 million in fishing equipment. Overall, Kentucky ranks 25th among the 50 states and the District of Columbia in the amount of expenditures associated with fishing. Commercial fish production (farm-raised) in Kentucky in 1988 generated \$2.2 million in income (personal communication, Dr. James Tidwell, Kentucky State University). Surface water is often used as source water for these commercial operations.

Tangible expenses for other activities such as water skiing, boating, and canoeing are unknown at the present. In the absence of this more concrete measure of value, however, an examination of the time spent in the activity and probable opportunity costs can give some indication of value. Opportunity costs relate to the opportunities individuals are willing to forego for a day of water-based recreation such as lost wages and salaries.

Based on the 1984 Statewide Comprehensive Assessment and Policy Plan for Outdoor Recreation, a significant demand exists for fishing, water-skiing, boating and canoeing on a statewide basis. On average, both rural and urban Kentuckians will spend nearly four days per year fishing, two and one-half days per year boating, eight-tenths of a day per year water skiing, and one-quarter of a day per year canoeing. When multiplied by the 1986 resident population of the state (3.7 million), this cumulatively equals 28.1 million visitor-days per year. Broken down, 14.9 million visitor-days per year will be spent fishing; 9.3 million visitor-days per year boating; 3.0 million visitor-days per year water skiing; and 931,750 visitor-days per year spent canoeing. For the majority of Kentuckians, the most important recreational issue is the protection and preservation of the state's natural resources. Over two-thirds of the respondents to a questionnaire rated the programs, which

designate trails, protect unique and natural areas, wild rivers and archaeological sites as very important (1984 Assessment and Policy Plan for Outdoor Recreation. Kentucky Department of Local Government).

Although this analysis does not attempt to precisely measure opportunity costs, it is safe to assume that significant opportunity costs are represented by the above user rate figures. Even at the current minimum wage rate, opportunity costs easily represent hundreds of millions of dollars in wages and salaries that individuals are willing to forego for water-based recreation opportunities.

This, of course, is a simplification, as not all individuals are minimum wage earners. Additionally, as mentioned earlier, opportunity costs are only one measure of value. Distance travelled to the site, lodging and subsistences at the site, privilege fees for the use of the resource, and other expenses must be included for a more accurate description of their worth and value. Unfortunately, this information is not available. However, Kentuckians obviously place significant value on the ease of access to and quality of water-based recreation activities provided by the state. They also expect that their health and safety will be safeguarded while participating in these activities.

2. Continuing costs or savings: No new requirements are being imposed on existing facilities. The cabinet has relied upon EPA-derived criteria in the absence of state criteria by invoking present narrative criteria provisions. No new continuing costs will therefore be incurred by the state adoption of these criteria. New dischargers and facilities which plan to expand will have to meet requirements based on these criteria. Since the cabinet has no information to indicate what future expansions will take place or where new dischargers plan to locate, costs would be speculative and are therefore not addressed. Whatever the costs would be, they would not be additional costs imposed by this regulation because of the present use of the newly listed criteria as discussed above. Advanced treatment may be required in some instances and can ordinarily be achieved by conventional activated sludge, fixed film lagoons, or land application processes, supplemented by some form of filtration, absorption, or chemical treatment. The exact treatment needs and costs of individual dischargers is case-specific depending on technology employed, wastewater characteristics, and receiving water characteristics. Therefore, aggregate costs cannot be determined.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None determined. This regulation will not have any effect on competition because it applies to all wastewater facilities, regardless of type or size.

(b) Reporting and paperwork requirements: This regulation does not contain any reporting or paperwork requirements. The regulation specifies legitimate stream uses as well as minimum criteria for protecting these uses.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Changes as specified in this regulation will have no effect on the operation or costs of the Natural Resources and

Environmental Protection Cabinet. The cabinet has already implemented the requirements of this regulation and has internalized associated costs within normal budget appropriations. This regulation as it relates to the operation of the cabinet does not change the basis for routine procedures involved in managing construction grants, permitting, compliance monitoring, or enforcement.

2. Continuing costs or savings: Same as (2)(a)1 above.

3. Additional factors increasing or decreasing costs: None determined.

(b) Reporting and paperwork requirements: Changes in this regulation will not affect the amount of paperwork of the Natural Resources and Environmental Protection Cabinet. Again, the regulation states minimum criteria for protecting legitimate stream uses, providing the basis for permitting, compliance monitoring, and enforcement actions where necessary.

(3) Assessment of anticipated effect on state and local revenues: Over the long run, compliance with this regulation will increase the revenue outlays of state and local government for necessary wastewater treatment. Again, however, the distinction being made here is that these costs are not new costs resulting from this regulation and entities affected are aware of these continuing, long-standing facility compliance requirements. No substantial changes are being proposed which would raise revenue outlays in the short-run.

(4) Assessment of alternative methods: reasons why alternatives were rejected: Toxics Criteria: The adoption of numerical criteria for toxic pollutants is a requirement of the Clean Water Act (CWA) amendments of 1987. The cabinet could meet the toxics requirement in one of three ways (or some combination thereof). These alternatives were:

(a) Adopt Statewide numerical criteria in State water quality standards for all section 307(a) (1) toxic pollutants for which EPA has developed criteria guidance, regardless of whether the pollutants are known to be present;

(b) Adopt specific numerical criteria in State water quality standards for section 307(a) (1) toxic pollutants as necessary to support designated uses where such pollutants are discharged or are present in the affected waters and could reasonably be expected to interfere with designated uses;

(c) Adopt a procedure to be applied to a narrative water quality standard provision that prohibits toxicity in receiving waters. Such a procedure would be used by the state in calculating derived numerical criteria, which criteria shall be used for all purposes under section 303(c) of the CWA. At a minimum, such criteria need to be developed for section 307(a)(1) toxic pollutants, as necessary to support designated uses, where these pollutants are discharged or present in the affected waters and could reasonably be expected to interfere with designated uses.

The cabinet chose to utilize alternative (a). Option (b) was rejected in favor of (a) because (a) provides a better measure of protection. Adoption of all the criteria prevents a piecemeal adoption of new criteria and saves the cabinet the time it would take for proposing new criteria. The water quality standards currently allow the cabinet to utilize EPA-derived criteria in the absence of state-adopted

numerical criteria. This has caused some consternation in the regulated sector because of beliefs that only numerical criteria in state regulations should be used to set permit limits. By choosing to adopt the additional numerical criteria, that consternation should disappear. Option (c) was not chosen because the cabinet did not have the resources necessary to develop an alternative procedure to develop criteria, especially a procedure for the protection of human health.

Risk Levels for Human Health Criteria for Carcinogens. EPA has estimated risk levels of one in one hundred thousand (10^{-5}), one in a million (10^{-6}) and one in ten million (10^{-7}) for additional cancers in human populations under one set of exposure assumptions, in developing its water quality criteria documents. The cabinet used the exposure assumptions developed by the EPA because it does not have the resources necessary to develop different assumptions and felt that the EPA assumptions were adequate. The cabinet chose a risk level of one in a million (10^{-6}) because it was thought to be reasonable and adequate to provide for protection of human health and was within the range developed by the EPA.

Governing Flows for Water Quality-Based Permits: A stream flow of a chosen magnitude is used to derive permit limitations for the protection of surface waters for the uses recognized in Kentucky's water quality standards regulations. A flow value termed the 7Q10 has historically been utilized by Kentucky and many other states to protect aquatic life uses under critical low flows. A 7Q10 flow is the lowest stream flow (measured in cubic feet per second) which occurs in a stream for 7 consecutive days with a recurrence interval of 10 years. No other alternative flows were considered for protection of aquatic life and recreational uses, aesthetics, radionuclide limits, domestic water supply uses, or human health protection from fish consumption for substances which were not cancer-causing. There was no compelling reason to consider other flows as the 7Q10 is generally accepted as an appropriate design flow for the protection of the above uses.

A harmonic mean flow to derive permit limitations for cancer-causing substances was chosen by the cabinet. A 7Q10 flow was felt to be inappropriate under the assumptions used to derive human-health criteria for carcinogens. The assumptions for deriving these criteria were that an adult weighing 70 kilograms would have to drink 2 liters of water a day for 70 years and/or eat 6.5 grams of fish every day for 70 years to have a one in a million chance of getting cancer if the water had a concentration of a carcinogen as listed in the regulation. The 7Q10 flow had no relation to these frequencies of exposure.

The cabinet wanted to choose a flow which could be used in calculating a loading of a carcinogen which, over a long period of time, would result in an instream concentration that on the average, would not exceed the allowable concentration nor result in significantly higher concentrations being present at any time. This would safeguard the public from the risk of high short-term exposures which could be masked by using certain flows.

The harmonic mean flow (defined as the reciprocal of the mean of the reciprocal daily flows) has been evaluated by EPA and the cabinet

and found to be an appropriate flow to use. It can be illustrated that the harmonic mean flow, if used to determine an allowable discharge of a carcinogen, would result in an exposure equal to that which would result from drinking 2 liters of water each day for 70 years and/or consuming 6.5 grams of fish tissue at the listed criteria level.

Mean annual flow and 30Q5 flow have also been evaluated and found to be inappropriate. If the annual means were used to determine allowable loadings the resultant instream concentrations could be unacceptably high for too long a period of time and result in an increased risk to the public. The 30Q5 flow is approximately 1.4 x the 7Q10 flow. It was rejected on the same grounds as the 7Q10 flow, i.e., it has no relation to the exposure frequencies used in determining cancer risk.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statutes, rules, regulations, or government policies were determined to be in conflict with this regulation. The chloride criteria for protection of aquatic life is identical to the federal standard for Kentucky (40 CFR 131.34). This federal standard should be rescinded when Kentucky's criteria are adopted.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: State water quality standards are required by federal law to be reviewed for possible changes at least every three years. The current review resulted in several changes which were discussed in public meetings held in July, 1988 in Bowling Green and Frankfort. The 1987 amendments to the Clean Water Act required that in this review, states adopt numerical criteria for all toxic pollutants listed pursuant to section 307(a)(1) of the Act for which criteria have been published under section 304(a), if their discharge or presence could reasonably be expected to interfere with the uses for which a state has designated their surface waters. There are 127 toxic pollutants listed in Section 307(a)(1). The U.S. EPA has developed aquatic life use criteria for 25 of these and human health recommendations for 123. The cabinet's extensive revisions to the criteria reflect these new requirements. Human health-related criteria are found in section 2, which provides protection from fish consumption and in section 5, which provides protection from fish and water consumption. New aquatic life criteria are found in section 4.

Tiering: Was tiering applied? No. Tiering was not applied since the regulation affects all discharges into surface waters irrespective of facility ownership, capacity, or unit processes or treatment employed.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 33 U.S.C.A. Section 1313; 40 CFR Part 131.

2. State compliance standards. The proposed amendments to the above regulation are the result of Kentucky's triennial review of its water quality standards. Numerical criteria have

been proposed for the protection of human health from the consumption of fish tissue and placed in section 2 under minimum criteria applicable to all surface waters. Criteria for the protection of human health from a combination of fish tissue and water consumption have been placed in section 5 under domestic water supply criteria. Tables 1 and 2 contain these new proposed numerical criteria. In addition, the criteria for the protection of aquatic life have been expanded. The new criteria are listed below:

Warm water Aquatic Habitat Criteria

Metals

Substance	Acute Criteria	Chronic Criteria
Arsenic (III)	360 ug/l	190 ug/l
Cadmium (ug/l)	e(1.128(1n Hard*)-3.828)	e(0.7852(1n Hard)-3.490)
Chromium (III) (ug/l)	e(0.8190(1n Hard)+3.688)	e(0.8190(1n Hard)+1.561)
Chromium (VI)	16 ug/l	11 ug/l
Copper (ug/l)	e(.9422(1n Hard)-1.464)	e(.8545(1n Hard)-1.465)
Iron	4.0 mg/l	1.0 mg/l
Lead (ug/l)	e(1.273(1n Hard)-1.460)	e(1.273(1n Hard)-4.705)
Mercury	2.4 ug/l	0.012 ug/l
Nickel (ug/l)	e(0.8460(1n Hard)+3.3612)	e(0.8460(1n Hard)+1.1645)
Selenium	20 ug/l	5 ug/l
Silver (ug/l)	e(1.72(1n Hard)-6.52)	
Zinc (ug/l)	e(0.8473(1n Hard)+0.8604)	e(0.8473(1n Hard)+0.7614)

Organics

Aldrin	3.0 ug/l	
Chlordane	2.4 ug/l	0.0043 ug/l
Chloropyrifos	0.083 ug/l	0.041 ug/l
DDT	1.1 ug/l	0.001 ug/l
Dieldrin	2.5 ug/l	0.0019 ug/l
Endosulfan	0.22 ug/l	0.056 ug/l
Endrin	0.18 ug/l	0.0023 ug/l
Heptachlor	0.52 ug/l	0.0038 ug/l
Lindane	2.0 ug/l	0.080 ug/l
Parathion	0.065 ug/l	0.013 ug/l
Pentachloro- phenol (ug/l)	e(1.005(pH) -4.830)	e(1.005(pH)- 5.290)
Toxaphene	0.73 ug/l	0.0002 ug/l

Others

Chloride	1200 mg/l	600 mg/l
Chlorine, total residual	19 ug/l	10 ug/l
Cyanide, free	22 ug/l	5 ug/l

The narrative criteria for protection of aquatic life from toxic substances are clarified for whole effluents and for toxicity bioassays. Units of measurement such as the no observed effect level (NOEL), chronic and acute toxicity units, and the one percent lethal concentration (LC1) are introduced. Information is provided regarding the flows used to calculate permit limitations in water-quality limited streams. A 7Q10 flow is used when writing permits to protect aquatic life and water-based recreation uses. It is also used when calculating limits for the protection of aesthetics and

radionuclide content in surface waters and for protection of human health from noncancer linked substances. The harmonic mean flow is used to calculate limits for the protection of human health from cancer-linked substances.

3. Minimum or uniform standards contained in the federal mandate. 33 U.S.C.A. section 1313 and 40 CFR Part 131 require that states review, and revise if appropriate, their water quality standards at least every three years. When revisions take place states are required to adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of the federal Clean Water Act (33 U.S.C.A. section 1317(a)(1)) for which criteria have been published under section 304(a) (33 U.S.C.A. section 1314(a)), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the state, as necessary to support such designated uses. The criteria must be specific numerical criteria for these toxic pollutants. Where numerical criteria are not available whenever a state reviews water quality standards or revises or adopts new standards, the state is required to adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8) (33 U.S.C.A. section 1314(a)(8)). Nothing in section 1313 is construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria. The published criteria provide protection for aquatic uses and for human health.

40 CFR Part 131 requires adoption of criteria for toxic pollutants to protect designated uses. The criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the most sensitive designated use. States may base numerical criteria on the U.S. Environmental Protection Agency (EPA) published section 304(a) (33 U.S.C.A. Section 1314(a)) criteria documents or on site-specific determinations or other scientifically defensible methods.

40 CFR 131.34 contains the federally promulgated water quality criteria for chloride in Kentucky. It states that "the applicable concentration for chloride" shall be as follows: 600 mg/l as a 30-day average, not to exceed a maximum of 1,200 mg/l at any time. This supersedes the chloride criteria in 401 KAR 5:031, Section 4(i) Table 1, entitled "Warm Water Aquatic Habitat Criteria".

Standards may also contain information on policies which may affect their application and implementation, they however, are not mandated.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 401 KAR 5:031 does not impose stricter requirements or responsibilities other than those required by the federal mandate. 33 U.S.C.A. Section 1313 and 40 CFR 131 require only that criteria be adopted by the states; they do not mandate their levels or suggest minimum or uniform standards. The cabinet has adopted criteria using EPA's published list of toxic pollutants and the suggestions contained in its published water quality criteria documents.

In adopting the human health criteria for cancer linked parameters in Tables 1 and 2, the

cabinet chose to employ human health criteria developed by the EPA which used a risk factor of one in a million (10^{-6}). This is the additional risk of contracting cancer an adult would have, on being exposed for a lifetime to the listed concentration of the cancer-linked substance. This assumes the adult, on a daily basis, would drink 2 liters of water and/or eat 6.5 grams of fish taken from a surface water which contains the listed concentration. The EPA criteria were developed over a range of risks. The other risk factors were one in one hundred thousand or 10^{-5} (less stringent) and one in ten million or 10^{-7} (more stringent). The resulting concentrations would be 10x that adopted by the cabinet for a 10^{-5} risk or 1/10 that adopted by the cabinet for a 10^{-7} risk. The risk factor adopted is within the range suggested by the EPA in its criteria documents. There is no federal mandate to employ a particular risk factor. The other noncancer linked substances have the same criteria as those suggested by the EPA.

The proposed chloride criteria for protection of aquatic life do not impose stricter requirements or responsibilities other than the federal criteria; they are identical. This is the only existing federal water quality standard for Kentucky.

Numerical and narrative criteria for the protection of aquatic life were adopted from the EPA's published criteria documents, and do not impose stricter requirements or responsibilities other than those required by the federal mandate.

The information on flows used to determine permit limits in water quality-limited streams is provided because it affects the way water quality standards are implemented. There is no federal mandate for adopting a particular flow. 40 CFR Part 131 provides discretion to the states to implement flow criteria, but does not suggest minimum or uniform standards. Information on controlling toxic substances through bioassay testing is included for similar reasons.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable because this regulation does not contain stricter standards, requirements or responsibilities other than those required by the federal mandate.

Table 1.
Water Quality Criteria for Protection of
Human Health from the Consumption
of Fish Tissue

<u>Substances not Linked to Cancer</u>	<u>Concentration (ug/l)</u>
<u>Metals¹</u>	
Antimony	45,000
Chromium (III)	3,433,000
Mercury	0.146
Nickel	100
Thallium	48
<u>Organics</u>	
Acrolein	780
1,2,4,5-tetrachlorobenzene	48
Pentachlorobenzene	85
1,1,1-trichloroethane	1,030,000

bis(2-chloroisopropyl) ether	4,360
Dichlorobenzenes	2,600
Dichloropropenes	14,100
Endosulfan	159
Ethylbenzene	3,280
Fluoranthene	54
Isophorone	520,000
2,4-dinitro-o-cresol	765
Dinitrophenol	14,300
Dibutyl phthalate	154,000
Diethyl Phthalate	1,800,000
Di-2-ethylhexyl phthalate	50,000
Dimethyl phthalate	2,900,000
Toluene	424,000

Substances Linked to Cancer

<u>Metals¹</u>	
Beryllium	0.117
<u>Organics</u>	
Acrylonitrile	0.65
Aldrin	.000079
Benzene	40.0
Benzidine	.00053
Carbon tetrachloride	6.94
Chlordane	.00048
Hexachlorobenzene	.00074
1,2-dichloroethane	243
1,1,2-trichloroethane	41.8
1,1,2,2-tetrachloroethane	10.7
Hexachloroethane	8.74
2,4,6-trichlorophenol	3.6
bis(2-chloroethyl) ether	1.36
Chloroform	15.7
DDT	0.000024
Dichlorobenzidine	0.02
1,1-dichloroethylene	1.85
Dieldrin	0.000076
2,4-dinitrotoluene	9.1
Dioxin (2,3,7,8-TCDD)	0.00000014
Diphenylhydrazine	0.56
Halomethanes	15.7
Heptachlor	0.00029
Hexachlorobutadiene	50.0
alpha Hexachlorocyclohexane (HCH)	0.031
beta HCH	0.0547
gamma HCH (lindane)	0.0625
Technical HCH	0.0414
N-nitrosodiethylamine	1.24
N-nitrosodimethylamine	16.0
N-nitrosodibutylamine	0.587
N-nitrosodiphenylamine	16.1
N-nitrosopyrrolidine	91.9
Polychlorinated Biphenyls (PCBs)	0.000079
Polynuclear Aromatic Hydrocarbons (PAHs)	0.0311
Tetrachloroethylene	8.85
Toxaphene	0.00073
Trichloroethylene	80.7
Vinyl Chloride	525
¹ Total recoverable form measured in an unfiltered sample	

Table 2
Domestic Water Supply Source Criteria¹
(Protection of Human Health from a Combination
of Fish and Water Consumption)

Metals

Substances Not Linked to Cancer	Concentration
Antimony	0.146 mg/l
Cadmium	0.010 mg/l
Chromium (III)	170 mg/l
Mercury	0.144 ug/l
Nickel	13.4 ug/l
Thallium	0.013 mg/l

Organics

Acrolein	0.320 mg/l
Monochlorobenzene	0.488 mg/l
1-2-4-5-tetrachlorobenzene	0.038 mg/l
Pentachlorobenzene	0.074 mg/l
1,1,1-trichloroethane	18.4 mg/l
2,4,5-trichlorophenol	2.6 mg/l
Bis(2-chloroisopropyl) ether	0.0347 mg/l
Dichlorobenzenes	0.400 mg/l
2,4-dichlorophenol	3.090 mg/l
Dichloropropenes	0.087 mg/l
Endosulfan	0.074 mg/l
Endrin	0.001 mg/l
Ethylbenzene	1.4 mg/l
Fluoranthene	0.042 mg/l
Hexachlorocyclopentadiene	0.206 mg/l
Isophorone	5.2 mg/l
Nitrobenzene	19.8 mg/l
2-4-dinitro-o-cresol	0.0134 mg/l
Dinitrophenol	0.070 mg/l
Pentachlorophenol	1.0 mg/l
Phenol	3.5 mg/l
Dibutyl phthalate	34 mg/l
Diethyl phthalate	350 mg/l
Di-2-ethylhexyl phthalate	15 mg/l
Dimethyl phthalate	313 mg/l
Toluene	14.3 mg/l

Metals (ug/l)

Beryllium	0.0068
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Organics (ug/l)

Acrylonitrile	0.058
Aldrin	0.000074
Asbestos (fibers/liter)	30,000
Benzene	0.66
Benzidine	0.00012
Carbon tetrachloride	0.40
Chlordane	0.0046
Hexachlorobenzene	0.00072
1,2-dichloroethane	0.94
1,1,2-trichloroethane	0.60
1,1,2,2-tetrachloroethane	0.17
Hexachloroethane	1.9
2,4,6-trichlorophenol	1.2
bis(2-chloroethyl) ether	0.03
Chloroform	0.19
DDT	0.000024
Dichlorobenzidine	0.01
1,1-dichloroethylene	0.033
Dieldrin	0.000071
2,4-dinitrotoluene	0.11
Dioxin (2,3,7,8-TCDD)	0.000000013
Diphenylhydrazine	0.042
Halomethanes	0.19
Heptachlor	0.00028

Hexachlorobutadiene	0.45
alpha Hexachlorocyclohexane (HCH)	0.009
beta HCH	0.016
gamma HCH (Lindane)	0.019
Technical HCH	0.012
N-nitrosodiethylamine	0.0008
N-nitrosodimethylamine	0.0014
N-nitrosodibutylamine	0.0064
N-nitrosodiphenylamine	4.9
N-nitrosopyrrolidine	0.016
Polychlorinated Biphenyls (PCBs)	0.000079
Polynuclear Aromatic Hydrocarbons (PAHs)	0.0028
Tetrachloroethylene	0.8
Toxaphene	0.00071
Trichloroethylene	2.7
Vinyl Chloride	2.0

¹See note 1 in Table 2

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No

2. State whether this administrative regulation will affect the local government or only a part of division of the local government? This regulation will affect public water supply and wastewater treatment divisions of local government.

3. State the aspect or service of local government to which this administrative regulation relates. Public water supply and wastewater treatment services of local government.

4. How does this administrative regulation affect the local government or any service it provides? This regulation sets forth protective criteria for instream uses designated by the cabinet (see 401 KAR 5:026). As noted in the fiscal note for 401 KAR 5:026, local governments will be required to discharge effluents which will assure attainment of the receiving surface water's designated uses. Citizens will benefit through maintenance of public water supplies, recreational uses, and edible fish stocks.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on October 13 [September 15], 1989 and hereinafter should be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

KSR 01-00-09	Public Information and News Media Relations	KSR 10-00-06	Unit D - Protective Custody (Amended 10/13/89)
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution	KSR 10-00-07	Unit D - Geriatrics
KSR 01-00-14	Extraordinary Occurrence Report	KSR 10-00-08	Unit D - Safekeepers (Amended 10/13/89)
KSR 01-00-15	Cooperation and Coordination with Oldham County Court	KSR 10-00-09	Unit D - Hold Ticket Residents [(Amended 9/15/89)]
KSR 01-00-19	Personal Service Contract Personnel	KSR 10-00-10	Unit D - Inmate Legal Access
KSR 01-00-20	Consent Decree Notification to Inmates	KSR 10-00-11	Unit D - Behavior Problem Control
KSR 02-00-01	Inmate Canteen	KSR 10-00-12	Unit D - Designated Staff Visits
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts	KSR 10-00-13	Unit D - Property Room Access [(Amended 9/15/89)]
KSR 02-00-11	Inmate Personal Accounts	KSR 11-00-01	Meal Planning for the General Population
KSR 02-00-12	Institutional Funds and Issuance of Checks	KSR 11-00-02	Special Diets
KSR 04-00-02	Staff Training and Development	KSR 11-00-03	Food Service Inspections
KSR 05-00-01	Officers' Daily Housing Security and Safety Log	KSR 11-00-04	Dining Room Dress Code for Inmates
KSR 05-00-02	Research Activities	KSR 11-00-06	Health Standards/Regulations for Food Service Employees
KSR 05-00-03	Management Information Systems	KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates
KSR 06-00-01	Inmate Master File	KSR 12-00-01	Inmate Summer Dress Regulations
KSR 06-00-02	Records Audit	KSR 12-00-02	Sanitation and General Living Conditions
KSR 06-00-03	Kentucky Open Records Law and Release of Psychological/Psychiatric Information	KSR 12-00-03	State Items Issued to Inmates
KSR 07-00-02	Institutional Tower Room Regulations	KSR 12-00-07	Regulations for Inmate Barbershop
KSR 07-00-04	Handling of PCB Articles and Containers	KSR 13-00-01	Identification of Mentally Retarded Inmates
KSR 07-00-05	Proper Removal of Transformers	KSR 13-00-02	Hospital Operations, Rules and Regulations
KSR 07-00-06	Asbestos Abatement	KSR 13-00-03	Medication for Inmates Leaving Institution Grounds
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family	KSR 13-00-04	Medical and Dental Care
KSR 08-00-08	Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery	KSR 13-00-06	Infection Control
KSR 08-00-09	Emergency Preparedness Training	KSR 13-00-07	Referral of Inmates Considered to Have Severe Emotional Disturbances
KSR 08-00-10	Hazardous Chemicals and Material Safety Data Sheet	KSR 13-00-08	Institutional Laboratory Procedures
KSR 09-00-04	Horizontal Gates/Box 1 Entry and Exit Procedure	KSR 13-00-09	Institutional Pharmacy Procedures
KSR 09-00-05	Gate I Entrance and Exit Procedure	KSR 13-00-10	Requirements for Medical Personnel
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy	KSR 13-00-11	Preliminary Health Evaluation and Establishment of Inmate Medical Record
KSR 09-00-14	Use of Force	KSR 13-00-12	Vision Care/Optomety Services
KSR 09-00-21	Crime Scene Camera	KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence	KSR 13-00-15	Medical Alert System
KSR 09-00-23	Drug Abuse Testing	KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 09-00-25	Inmate Motor Vehicle Operator's License	KSR 14-00-01	Inmate Rights
KSR 09-00-26	Contraband Outside Institutional Perimeter	KSR 14-00-02	A/C Center and Unit D Inmate Access to Legal Aide Services
KSR 09-00-27	Construction Crew Entry/Exit	KSR 14-00-04	Inmate Grievance Procedure
KSR 09-00-28	Restricted Areas	KSR 14-00-05	Inmate Marriages
KSR 09-00-29	Transportation of Inmates	KSR 14-00-06	Inmate Legal Aides
KSR 10-00-01	Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records [(Amended 9/15/89)]	KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
KSR 10-00-02	Unit D - General Operational Procedures	KSR 15-00-04	Restoration of Forfeited Good Time
KSR 10-00-03	Unit D - Inmate Tracking System and Records System (Amended 10/13/89)	KSR 15-00-05	Differential Status for SU (QUIT) Inmates
KSR 10-00-04	Unit D - Administrative Segregation (Amended 10/13/89)	KSR 15-00-06	Inmate I.D. Cards
KSR 10-00-05	Unit D - Disciplinary Segregation (Amended 10/13/89)	KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures [(Amended 9/15/89)]
		KSR 15-00-08	Firehouse Living Area
		KSR 15-00-10	Program Services for Special Housing Placement [(Added 9/15/89)]
		KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
		KSR 15-01-02	Staff Operational Procedure
		KSR 15-01-03	Inmate Rules and Regulations
		KSR 15-01-04	Institutional Medical and Fire Safety Service: Unit Application
		KSR 15-01-05	Institutional Inmate Services

KSR 15-01-06 Inmate Housing Criteria and Regulations, Honor Status and General Population
 KSR 16-00-01 Visiting Regulations
 KSR 16-00-02 Inmate Correspondence and Mailroom Operations
 KSR 16-00-03 Inmate Access to Telephones
 KSR 17-00-01 Housing Unit Assignment - Assessment/Classification Center
 KSR 17-00-03 Notifying Inmates' Families of Admission and Procedures for Mail and Visiting
 KSR 17-00-04 Assessment/Classification Center Operations, Rules and Regulations
 KSR 17-00-05 Dormitory 10 Operations
 KSR 17-00-06 Identification Department Admission and Discharge Procedures
 KSR 17-00-07 Inmate Personal Property
 KSR 17-00-08 Repair of Inmate Owned Appliances by Outside Dealers
 KSR 18-00-04 Returns from Other Institutions
 KSR 18-00-05 Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
 KSR 18-00-06 Classification and Special Notice Form
 KSR 19-00-01 Inmate Work Incentives
 KSR 19-00-02 On-the-job Training Program
 KSR 19-00-03 Safety Inspections of Inmate Work Assignment Locations
 KSR 20-00-01 Vocational School Referral and Release Process
 KSR 20-00-03 Academic School Programs
 KSR 20-00-04 Criteria for Participation in Jefferson Community College Program
 KSR 20-00-08 Integration of Vocational and Academic Education Programs
 KSR 21-00-01 Legal Aide Office and Law Library Services and Supervision
 KSR 21-00-02 Inmate Library Services
 KSR 21-00-03 Library Services for Unit D
 KSR 22-00-03 Inmate Organizations
 KSR 22-00-07 Inmate News Magazine
 KSR 23-00-02 Chaplain's Responsibility and Inmate Access to Religious Representatives
 KSR 23-00-03 Religious Programming
 KSR 25-00-01 Discharge of Residents to Hospital or Nursing Home
 KSR 25-00-02 Violations of Law or Code of Conduct by Inmates on Parole Furlough
 KSR 25-00-03 Preparole Progress Report

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: October 13, 1989

FILED WITH LRC: October 13, 1989 at noon

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 22, 1989 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 545 employees of the Kentucky State Reformatory, 1410 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to

those affected:

1. First year: None
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs (note any effects upon competition): None
 - (b) Reporting and paperwork requirements: None
 - (2) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
 2. Continuing costs or savings: Same as 2(a)1.
 3. Additional factors increasing or decreasing costs: Same as 2(a)1.
 - (b) Reporting and paperwork requirements: Monthly submission of policy revisions.
 - (3) Assessment of anticipated effect on state and local revenues: None
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: None
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments: None
- TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET (Proposed Amendment)

501 KAR 6:120. Blackburn Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on October 13 [August 15], 1989 and hereinafter should be referred to as Blackburn Correctional Complex and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

BCC 01-05-01	Duty Officer and Acting Warden
BCC 01-07-01	Extraordinary Occurrence Reports
BCC 01-09-01	Legal Assistance for Staff
BCC 01-11-01	Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies
BCC 01-13-01	Relationships with Public, Media, and Other Agencies
BCC 01-15-01	Internal Affairs Office
BCC 01-16-01	Tours of Blackburn Correctional Complex
BCC 01-19-01	Inmate Access to BCC Staff
BCC 02-01-01	Inmate Canteen

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BCC 02-02-01	Fiscal Responsibility [(Amended 8/15/89)]	BCC 09-14-01	Prohibiting Inmate Authority Over Other Inmates
BCC 02-02-02	Fiscal Management: Accounting Procedures	BCC 09-15-01	Search Policy/Disposition of Contraband
BCC 02-02-03	Fiscal Management: Checks	BCC 09-16-01	Security Activity Logs
BCC 02-02-04	Fiscal Management: Budget [(Amended 8/15/89)]	BCC 09-17-01	Institutional Supervisor Inspections
BCC 02-02-05	Fiscal Management: Insurance	BCC 09-18-01	Use of State Vehicles and Staff Owned Vehicles
BCC 02-02-06	Fiscal Management: Audits [(Amended 8/15/89)]	BCC 09-19-01	Duties and Responsibilities of the Institutional Captain
BCC 02-04-01	Billing Method for Health Services Staff Paid by Personal Service Contract	BCC 09-19-02	Duties and Responsibilities of the Shift Supervisor
BCC 02-05-01	Property Inventory	BCC 09-20-01	Inmate Death
BCC 02-06-01	Purchasing	BCC 09-21-01	Tool Control
BCC 02-07-01	Inmate Personal Accounts	BCC 09-22-01	Emergency Communication System
BCC 04-02-01	Firearms Training	BCC 10-01-01	Special Management Inmates (Amended 10/13/89)
BCC 04-03-01	Educational Assistance Program	BCC 11-01-01	Menu and Special Diets
BCC 05-01-01	Inmate Participation in Authorized Research	BCC 11-02-01	Food Service: Inspection, Health Protection and Sanitation
BCC 06-01-01	Storage of Expunged Records	BCC 11-03-01	Food Service: Meals
BCC 06-02-01	Records - Release of Information	BCC 11-04-01	Dining Room Guidelines
BCC 06-02-02	Offender Records [(Amended 8/15/89)]	BCC 11-05-01	Food Service Security: Knife & Other Sharp Instrument/Utensil Control
BCC 06-03-01	Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board	BCC 11-06-01	Purchasing, Storage and Farm Products
BCC 08-02-01	Natural Disaster Plan (Tornado)	BCC 11-07-01	Food Service Operations Manual
BCC 08-03-01	Emergency Preparedness Plan Manual	BCC 12-02-01	Personal Hygiene Items [(Amended 8/15/89)]
BCC 08-04-01	Fire Safety Plan, Drills and Related Staff Duties	BCC 12-02-02	Personal Hygiene for Inmates: Clothing, Linens and Shower Facilities
BCC 08-04-02	Immediate Release of Inmates from Locked Areas	BCC 12-05-01	Barber Shop Services
BCC 08-05-01	Duties of Fire Safety Officer [(Added 8/15/89)]	BCC 12-06-01	BCC Housekeeping Plan
BCC 08-06-01	Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials	BCC 13-01-01	Sick Call and Pill Call [(Amended 8/15/89)]
BCC 08-07-01	Facility Furnishings: Exit and Emergency Lights and Noncombustible Containers	BCC 13-02-01	Administration and Authority for Health Services [(Amended 8/15/89)]
BCC 09-01-01	Inclement Weather/Emergency Condition Operation	BCC 13-03-01	Provisions of Health Care Delivery [(Amended 8/15/89)]
BCC 09-02-01	Restricted Areas	BCC 13-04-01	Licensure and Training Standards
BCC 09-02-02	Inmate Pass System to Restricted Areas	BCC 13-05-01	Medical Alert System
BCC 09-02-03	Regulation of Inmate Movement	BCC 13-06-01	Health Care Practices
BCC 09-02-04	Radio Escorted Yard Movement During Daylight Savings Time (November 1 - April 30) [(Amended 8/15/89)]	BCC 13-07-01	Emergency Medical Care Plan
BCC 09-03-01	Inmate Identification	BCC 13-07-02	Emergency and Specialized Health Services [(Amended 8/15/89)]
BCC 09-04-02	Complex Entry & Exit	BCC 13-07-03	Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent
BCC 09-05-01	Key Control	BCC 13-08-01	Inmate Health Screening and Evaluation
BCC 09-06-02	Transportation to Courts	BCC 13-09-01	Prohibition on Medical Experimentation
BCC 09-07-01	Drug Abuse and Intoxicants Testing	BCC 13-10-01	Dental Services [(Amended 8/15/89)]
BCC 09-08-02	Use of Restraints (Amended 10/13/89)	BCC 13-11-01	Suicide Prevention and Intervention Program [(Amended 8/15/89)]
BCC 09-09-01	Population Counts and Count Documentation (Amended 10/13/89)	BCC 13-12-01	Use of Pharmaceutical Products [(Amended 8/15/89)]
BCC 09-10-03	Development of Institutional Post Orders	BCC 13-12-02	Parenteral Administration of Medications and Use of Psychotropic Drugs
BCC 09-10-04	Governmental Services, Study Release Officer Post Orders	BCC 13-13-01	Inmate Health Education
BCC 09-10-05	Unit A-1 Post Orders	BCC 13-14-01	Management of Serious and Infectious Diseases
BCC 09-10-06	Recreation Post Orders: Observation	BCC 13-15-01	Informed Consent
BCC 09-10-07	Entrance Gate Post Orders	BCC 13-16-01	Health Records
BCC 09-10-08	Visiting Area Post Orders	BCC 13-17-01	Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery
BCC 09-10-09	Security Staff General Orders		
BCC 09-10-10	Dining Room Officer Post Orders		
BCC 09-12-01	Use of Physical Force; Prohibition of Personal Abuse and Corporal Punishment		
BCC 09-13-01	Perimeter Patrol		

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BCC 13-19-01 Physicians Referrals/Continuity of Care

BCC 13-20-01 Chronic and Convalescent Care

BCC 13-22-01 Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers

BCC 13-23-01 First Aid Kits

BCC 14-01-01 Office of Public Advocacy Attorney Visits

BCC 14-02-01 Law Library

BCC 14-03-01 Inmate Grievance Procedure [(Amended 8/15/89)]

BCC 14-04-01 Inmate Rights and Responsibilities

BCC 14-05-01 Inmate Claims

BCC 14-06-01 Legal and Support Services for Indigent Inmates

BCC 15-02-01 Meritorious Living Unit (B-1)

BCC 15-02-02 Room Assignment

BCC 15-03-01 Rules and Regulations for Dormitories

BCC 15-04-01 Restoration of Forfeited Good Time (Amended 10/13/89)

BCC 15-05-01 Extra Duty Assignments

BCC 15-06-01 Due Process/Disciplinary Procedures (Amended 10/13/89)

BCC 16-01-01 Inmate Furloughs

BCC 16-02-01 Visiting

BCC 16-03-01 Inmate Packages

BCC 16-03-02 Outgoing Inmate Packages

BCC 16-03-03 Inmate Correspondence

BCC 17-02-01 Authorized Inmate Personal Property (Amended 10/13/89)

BCC 17-03-01 Processing of New Inmates From Local Jails

BCC 18-01-01 Classification: Institutional Classification and Reclassification

BCC 18-02-01 Racial Balance in Living Areas

BCC 19-01-01 Inmate Work Programs

BCC 19-02-01 Classification of Inmates to Governmental Service Program (Amended 10/13/89)

BCC 19-03-01 Correctional Industries (Amended 10/13/89)

BCC 20-01-01 Academic and Vocational School

BCC 20-02-01 College Programs

BCC 20-04-01 Educational Program Evaluation

BCC 20-05-01 Educational Program Planning

BCC 20-06-01 Academic and Vocational Curriculum

BCC 21-01-01 Library Services

BCC 22-01-01 Arts and Crafts/Production and Sale of Items

BCC 22-02-01 Privileged Trips (Amended 10/13/89)

BCC 22-03-01 Recreational Employees

BCC 22-04-01 Recreation and Inmate Activities

BCC 22-04-02 Inmate Clubs and Organizations

BCC 22-04-03 Conducting Inmate Organizational Meetings and Programs

BCC 22-04-04 Recreation Program Availability

BCC 22-04-05 Supervision of Leisure-time Craft Club Activities and Materials [(Amended 8/15/89)]

BCC 22-06-01 Music Club

BCC 22-08-01 Unit Recreation Program

BCC 22-09-01 Use of Inmates in Recreation Programs

BCC 23-01-01 Religious Services

BCC 24-01-01 Duties and Responsibilities of Classification and Treatment Officers (Amended 10/13/89)

BCC 24-02-01 Duties and Responsibilities of the Unit Director and Assistant to Unit Director [(Amended 8/15/89)]

BCC 24-03-01 Social Services

BCC 25-01-01 Inmate Check Out Procedure

BCC 25-02-02 Temporary Release/Community Center Release

BCC 25-05-01 Supplemental Parole Progress Reports

BCC 26-01-01 Citizen Involvement and Volunteer Service Program

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: October 13, 1989

FILED WITH LRC: October 13, 1989 at noon

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 22, 1989 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones

(1) Type and number of entities affected: 94 employees of the Blackburn Correctional Complex, 389 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

TRANSPORTATION CABINET Office of Minority Affairs (Proposed Amendment)

600 KAR 4:020. The disadvantaged, minority and women business enterprise program.

RELATES TO: KRS Chapters 96A, 174, 176, 177 183
STATUTORY AUTHORITY: KRS 13A.120, 174.080

NECESSITY AND FUNCTION: Title 49 of the Code of Federal Regulations Part 23 requires that

most recipients of funds from the United States Department of Transportation (USDOT) implement a program of supporting the fullest possible participation of firms owned and controlled by minorities, women and socially and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by the federal regulation to have a program that requires the participation of disadvantaged, minority and women business enterprises in contracts financed in whole or in part with federal funds. This administrative regulation establishes the procedures to be followed by and requirements of contractors and subcontractors dealing with the Transportation Cabinet.

Section 1. Definitions. (1) "DBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a disadvantaged business enterprise.

(2) "MBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a minority business enterprise.

(3) "WBE" means a firm certified by the Transportation Cabinet under the provisions of 600 KAR 4:010 as a women business enterprise.

(4) "Good faith effort" means an attempt that can reasonably be expected to produce a level of disadvantaged, minority or women business enterprise participation sufficient to meet contract goals.

(5) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the firm's application for certification or bid documents.

(6) "Prime contractor" means an individual, partnership, firm, corporation, joint venture, or any other acceptable business entity that contracts with the Kentucky Transportation Cabinet for the performance of prescribed work.

(7) "Subcontractor" means an individual, partnership, firm, corporation, joint venture, or any other acceptable business entity that subcontracts any portion of a contract with the written consent of the Transportation Cabinet.

(8) "Suspension" means the action taken for cause by the Transportation Cabinet to disqualify for a specified period of time a person or firm from participating as a DBE, MBE, or WBE in Transportation Cabinet federal-aid projects.

Section 2. Contract Goals. (1) Goals shall be established for DBE, MBE or WBE participation in a portion of the Transportation Cabinet projects in which there is United States Department of Transportation funding.

(2) A project proposal may contain goals for participation of DBE, MBE or WBE subcontractors.

(3) Any contractor who bids on and is the apparent successful competitor for such a project shall be responsible for meeting the goals for participation of DBE, MBE or WBE subcontractors which are set forth in the project proposal. The contractor shall submit to the Transportation Cabinet DBE, MBE or WBE subcontractor participation information.

Section 3. Prime Contractor Guidelines. (1) Before a prime contractor enters into a contractual agreement with the Transportation Cabinet on a project which contains goals for participation of DBE, MBE or WBE subcontractors,

he shall submit an original and two (2) copies of each agreement between the prime contractor and any DBE, MBE, or WBE to the Transportation Cabinet, Department of Highways. The agreement shall be signed and notarized by both parties to the agreement. The agreement shall set forth a description of the work the DBE, MBE, or WBE subcontractor is to perform or the materials or services to be supplied; the unit price the DBE, MBE, or WBE subcontractor is to be paid for each item; and the total dollar value of the subcontract. All of these [such] agreements shall be reviewed by the Transportation Cabinet, Office of Minority Affairs prior to the execution of the project contract to ensure that the project goal will be met and that the DBE, MBE, or WBE subcontractors are certified in Kentucky.

(2) Toward the DBE, MBE or WBE participation goal established for the project, the prime contractor may count expenditures for materials and supplies obtained from DBE, MBE or WBE suppliers and manufacturers, provided the DBE, MBE or WBE assumes actual and contractual responsibility for providing the materials and supplies as follows:

(a) The prime contractor may count its entire expenditure to a DBE, MBE or WBE manufacturer who operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor; and

(b) The prime contractor may count sixty (60) percent of its expenditures to DBE, MBE or WBE regular dealers who own, operate or maintain a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm shall engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.

(c) Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this administrative regulation.

(3) The prime contractor may count toward its MBE, DBE, or WBE goals the following expenditures to MBE, DBE, or WBE firms that are not manufacturers or regular dealers:

(a) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(b) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services;

and

(c) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar service.

(4) Toward the DBE, MBE or WBE participation goal established for the project, the prime contractor may count only expenditures to DBEs, MBEs or WBEs that perform a commercially useful function in the work of a contract. A DBE, MBE or WBE firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine if a DBE, MBE or WBE is performing a commercially useful function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated.

(5) A prime contractor may count toward its DBE, MBE or WBE goal a portion of the total dollar value of a subcontract with a joint venture certified under the provisions of 600 KAR 4:010 equal to the percentage of ownership and control of the DBE, MBE or WBE partner in the joint venture.

(6) If the prime contractor fails to reach the goals of the project and fails to demonstrate sufficient good faith efforts as set forth in Section 6 of this administrative regulation, the Office of Minority Affairs shall in writing advise the Department of Highways that the contract agreement with the prime contractor should not be executed because he has failed to reach the DBE, MBE, or WBE participation goals of the contract.

(7) If the prime contractor reaches the DBE, MBE or WBE participation goals and the contractual agreement with the Transportation Cabinet is executed, the prime contractor is bound by the approved DBE, MBE or WBE percentage participation of the contract.

(8) If the prime contractor's subcontract is cancelled, he shall replace the approved DBE, MBE or WBE with another certified DBE, MBE or WBE firm. An original and two (2) copies of the completed and executed agreement between the prime contractor and the new DBE, MBE, or WBE subcontractor shall be submitted to the Office of Minority Affairs. The agreement shall be reviewed by the Office of Minority Affairs as set forth in subsection (1) of this section prior to the replacement DBE, MBE or WBE beginning work on the project. If the prime contractor is unable to replace the subcontractor with a certified DBE, MBE or WBE he shall request a finding of good faith effort as set forth in Section 6 of this administrative regulation.

(9) If the prime contractor and DBE, MBE, or WBE subcontractor intend to amend their agreement which has previously been reviewed by the Office of Minority Affairs, the revision shall be submitted to the Office of Minority Affairs for review prior to the amendment being implemented to ensure that the DBE, MBE, or WBE participation goal will still be met.

(10) The prime contractor shall pay the DBE, MBE or WBE subcontractor for work performed or materials furnished within seven (7) working days after receiving payment from the

Transportation Cabinet.

(11) The prime contractor shall, upon request, make available to the Office of Minority Affairs information related to the conduct of the project.

Section 4. Prime Contractor Failure. (1) The following shall be deemed failure of the prime contractor to meet the approved DBE, MBE or WBE percentage participation of the contract and thus violation of his contract provisions:

(a) Failure to use the approved DBE, MBE or WBE subcontractor;

(b) Use of the approved DBE, MBE or WBE subcontractors to an extent that provides a percentage participation less than indicated in the contract agreement with the Transportation Cabinet; and

(c) Use of a DBE, MBE or WBE subcontractor other than those named in the subcontract reviewed by the Office of Minority Affairs.

(2) The Office of Minority Affairs shall notify the prime contractor of his failure to meet the approved DBE, MBE or WBE percentage participation of the contract. The notice shall contain the reasons for the failure and a time deadline for correction of the failure. The prime contractor in accordance with the provisions of Section 11 [10] of 600 KAR 4:010 may file an appeal within the time deadline. If the firm fails to file an appeal and fails to meet the DBE, MBE or WBE percentage participation of the contract, the Office of Minority Affairs shall in writing advise the Department of Highways of the violation of contract provisions.

Section 5. Good Faith Efforts. (1) If the apparent successful competitor for the project is unable to meet his DBE, MBE or WBE goals but believes he has made a good faith effort toward the goal, he may in writing request a finding of good faith effort from the Office of Minority Affairs. The written request shall substantiate his claim that reasonable efforts were put forth to obtain the project goals. The Office of Minority Affairs shall consider the application for a finding of good faith effort and provide notice to the apparent successful competitor of its decision within ten (10) days of receipt of the application.

(2) The Office of Minority Affairs shall in writing advise the Department of Highways of its decision.

(3) The criteria used by the Office of Minority Affairs for determining if an apparent successful competitor has demonstrated good faith efforts shall include but are not limited to the following:

(a) The apparent successful competitor's attendance at the prebid meeting regarding the specific project;

(b) The apparent successful competitor's providing written announcement of project to a reasonable number of DBEs, MBEs or WBEs regarding subcontracting opportunities;

(c) The apparent successful competitor's allowing sufficient time for DBEs, MBEs or WBEs to respond to the written announcement of project;

(d) The apparent successful competitor's following up written announcement of project with telephone calls or personal contact;

(e) The apparent successful competitor's contacting the Transportation Cabinet's

supportive services contractor for assistance in identifying DBE, MBE or WBE firms. The supportive services contractor is a contractor that provides services to the Transportation Cabinet relating to DBE, MBE, or WBE;

(f) The apparent successful competitor's selecting items of work on the project that DBEs, MBEs or WBEs are prequalified in accordance with 603 KAR 2:015 to perform;

(g) The apparent successful competitor's providing DBEs, MBEs or WBEs with adequate information about the project when requesting quotations;

(h) The apparent successful competitor's making efforts to assist DBEs, MBEs or WBEs in obtaining bonding, credit or insurance;

(i) The apparent successful competitor's advertising in general circulation, trade association and minority focus media for a reasonable time, preferably at least twenty (20) days, before bids or proposals are due;

(j) The location of the project;

(k) The size of the project;

(l) The type of work required by the project; and

(m) The availability of DBEs, MBEs and WBEs.

(4) If the apparent successful competitor is unable to meet the DBE, MBE or WBE participation goal and either did not request a finding of good faith effort or failed to satisfy the Office of Minority Affairs that he has substantiated his claim of good faith efforts, the Office of Minority Affairs shall notify the apparent successful competitor of the reasons why his claim of good faith efforts was not accepted and additional efforts he may make to meet the contract goal.

(5) The apparent successful competitor for the project may file an appeal with the Transportation Cabinet in accordance with the provisions of Section 11 [10] of 600 KAR 4:010 within ten (10) days of the date of the notice. If the firm fails to file an appeal or successfully make the additional efforts within the ten (10) days, the Office of Minority Affairs shall in writing advise the Department of Highways that the firm has neither met the project goals nor made a good faith effort to meet the project goals.

(6) If the apparent successful competitor elects not to file an appeal under the provisions of 600 KAR 4:010, he may within the ten (10) days appeal to the Commissioner, Department of Highways as provided in Sections 9 and 10 of 603 KAR 2:015. However, instead of departmental construction engineers a representative of the Office of Minority Affairs shall be present at the hearing. The hearing examiner and the Commissioner of the Department of Highways shall use the criteria set forth in subsection (3) of this section to determine if the apparent successful competitor has demonstrated good faith efforts.

Section 6. Subcontractor's Guidelines. (1) Only a subcontractor who is certified under the provisions of 600 KAR 4:010 prior to the date of the bid letting for the project may issue a quote on a USDOT assisted project in order to meet a DBE, MBE or WBE goal.

(2) At least fifty (50) percent of the DBE, MBE or WBE subcontractor's work force shall perform the work outlined in the subcontract.

(3) Second tier subcontracting by a DBE, MBE or WBE subcontractor may only be accomplished if

the proposed second tier subcontractor is a DBE, MBE or WBE and the Office of Minority Affairs has reviewed the second tier DBE, MBE or WBE subcontract prior to execution.

(4) A DBE, MBE or WBE subcontractor shall designate in writing a project superintendent who supervises the subcontractor's work force daily. The project superintendent shall not be employed by any other contractor on the same project for the life of the project.

(5) If the subcontractor rents equipment from another contractor, the rental agreement shall be in writing and be approved by the Transportation Cabinet's resident engineer on the project.

Section 7. DBE, MBE or WBE as Contractor. Nothing in this administrative regulation shall be construed so as to prohibit a DBE, MBE or WBE from competing on a project in the role of prime contractor.

Section 8. DBE, MBE or WBE Noncompliance. (1) If any certified DBE, MBE or WBE is found to be in noncompliance with any of the requirements of this administrative regulation, the firm may have its certification suspended for a specified period of time. The Office of Minority Affairs shall notify the certified firm of the pending suspension. The notice shall specify the reasons for the pending suspension.

(2) The firm may request a predetermination meeting within ten (10) days of the date of the notice. If the firm fails to request a predetermination meeting within the ten (10) days it shall be suspended for a specified period of time.

(3) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 10 [9] of 600 KAR 4:010.

(4) If the Transportation Cabinet, Office of Minority Affairs' decision after the predetermination meeting is that the firm shall be suspended, the firm may appeal the decision in accordance with Section 11 [10] of 600 KAR 4:010.

(5) The effective date of the suspension is thirty (30) days after the date the notice of suspension is mailed to the firm, providing the firm does not appeal the suspension to the Transportation Cabinet. If a firm appeals the suspension, the effective date of the suspension shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 11 [10] of 600 KAR 4:010.

WILLIAM E. COFIELD, Executive Director

MILO D. BRYANT, Secretary

APPROVED BY AGENCY: September 8, 1989

FILED WITH LRC: October 4, 1989 at noon

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on November 21, 1989 at 10:30 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by November 16, 1989 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript

of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until November 16, 1989. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All transportation contractors operating in the Commonwealth.

(a) Direct and indirect costs or savings to those affected: None as a result of this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None as a result of this amendment.

(2) Effects on the promulgating administrative body: None as a result of this amendment.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None as a result of this amendment.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: When 600 KAR 4:010 was amended last year, references to that regulation in this regulation were not amended. This amendment has been filed just to correct this oversight.

TIERING: Was tiering applied? Yes.

TRANSPORTATION CABINET Department of Vehicle Regulation (Proposed Amendment)

601 KAR 12:040. Driving history record; fee.

RELATES TO: KRS 61.874

STATUTORY AUTHORITY: KRS 61.874, 186.400

NECESSITY AND FUNCTION: KRS 61.874 authorizes any agency required to keep public records to adopt reasonable fees to defray costs of furnishing copies to the public. This regulation is adopted to provide a reasonable fee to defray the costs of furnishing a copy of a person's driving history record to a person making a proper request.

Section 1. Upon payment of five (5) [three (3)] dollars and the completion of any forms which may be required by the Transportation Cabinet, any person may obtain a copy of a driving history record which is in custody and control of the Transportation Cabinet.

Section 2. Any person submitting requests for driving history records by any method of data processing recording media adaptable to the Transportation Cabinet's system shall be given a ten (10) cent reduction in cost per record. Those submitting requests by any other method which requires the request to be manually entered into the computer system shall be charged the full amount.

JEROME L. LENTZ, Commissioner

MILO D. BRYANT, Secretary

APPROVED BY AGENCY: October 4, 1989

FILED WITH LRC: October 11, 1989 at 11 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on November 21, 1989 at 1 p.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by November 16, 1989 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until November 16, 1989. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: 1,000,000 persons requesting copies of driving history records each year.

(a) Direct and indirect costs or savings to those affected:

1. First year: Cost of \$2 million total; \$2 per person.

2. Continuing costs or savings: \$2 million each year total.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Savings of \$2 million each year.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: \$2 million more each year in

the road fund.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cost of generating and mailing a driving history record has greatly increased since the last increase in the fee of 1984.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes.

**TRANSPORTATION CABINET
Office of Aeronautics
(Proposed Amendment)**

602 KAR 20:100. [Special and] Public use heliport.

RELATES TO: KRS 183.090

STATUTORY AUTHORITY: KRS 183.024

NECESSITY AND FUNCTION: This regulation sets forth the minimum airport safety standards for a classification [landing area designation as a special use heliport] or as a public use heliport.

Section 1. Definitions. (1) "Approach surface" means the obstruction clearance planes, which are aligned with the path selected for flight and which extend upward and outward from the edge of the landing area. They increase in elevation at a given ratio of horizontal to vertical feet. These surfaces may be curved.

(2) "Helicopter" means a rotorcraft that, for its horizontal motion, depends principally on its engine-driven rotors.

(3) "Heliport" means an airport used exclusively or intended to be used for the landing and takeoff of helicopters. It may either be at ground level or elevated on a structure.

(4) "Landing area" means that specific area on land, water or a structure on which the helicopter actually lands or takes off, including the touchdown area.

(5) "Landing area designation" means a certificate of approval of the safety and adequacy of an airport facility issued by the Transportation Cabinet in accordance with 602 KAR 20:020.

(6) "Peripheral area" means a safety zone that provides an obstruction-free area on all sides of the landing area.

(7) "Public use" means open to the general public without a prior request to use the heliport.

(8) "Touchdown area" means that part of the landing area where it is preferred that the helicopter alight.

(9) "Transitional surfaces" mean those obstruction clearance planes adjacent to the landing area and the approach surfaces. They extend outward and upward from the edges of the landing area and the approach surfaces at a given ratio of horizontal to vertical feet. [(1) A special use heliport (HS) is any heliport in this state that is not open to the general public. A public use heliport (HP) is any

heliport in this state that is open to the general public with or without a prior request to use the heliport.]

Section 2. [(2)] Any heliport in this state classified as a [special use heliport or] public use heliport shall meet the [minimum] safety standards set forth in this regulation and those of 602 KAR 20:030.

Section 3. [2.] (1) The person who owns or controls [a special use heliport or] a public use heliport shall have control over a minimum land area equal to the dimensions of the landing area surrounded by the peripheral area.

(2) The landing area shall be a square with each side equal to one and one-half (1 1/2) times the overall length of the largest helicopter anticipated to use the facility.

(3) The peripheral area shall have a minimum width equal to one-fourth (1/4) the overall length of the largest helicopter anticipated to use the facility, but not less than ten (10) feet.

Section 4. [3.] The touchdown area dimensions shall be equal to the rotor diameter of the largest helicopter anticipated to use the facility.

[Section 4. There shall be at least a ninety (90) degree separation between heliport approach surfaces.]

Section 5. The heliport approach surface shall be at a ratio of eight (8) to one (1). The width of the sloping plane surface shall coincide with the dimension of the landing area and flare uniformly to a width of 500 feet at a distance of 4,000 horizontal feet from the landing area.

Section 6. If the heliport approach surface is curved, then 300 feet shall be the distance from the edge of the landing area prior to the beginning of the curve.

Section 7. The heliport transitional surface shall be at a ratio of two (2) to one (1) to a distance of 250 feet from the center of the landing and 250 feet from the centerline of the heliport approach surface.

Section 8. Where the helicopter taxis on the ground, a taxiway twenty (20) feet in width shall be provided and lateral clearance shall provide a minimum of ten (10) feet between the rotor tip and any object where the helicopter taxis on the ground.

[Section 9. The Transportation Cabinet shall restrict the use of a special use heliport by noting the restriction on the landing area designation to use by a person or class of people.]

BOB BODNER, Executive Director

MILO D. BRYANT, Secretary

APPROVED BY AGENCY: September 25, 1989

FILED WITH LRC: October 5, 1989 at 9 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on November 21, 1989 at 9:30 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky.

Any person who intends to attend this hearing must in writing by November 16, 1989 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until November 16, 1989. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ben Prewitt

(1) Type and number of entities affected: All airport operators in the Commonwealth of Kentucky.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No new requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Updated part of the airport regulations to reflect changes in federal criteria which have been the basis for the standards set forth in most of 600 KAR Chapter 20. While those changes were being effected, changes were made to comply with the new requirements of KRS Chapter 13A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes.

TRANSPORTATION CABINET
Department of Highways
Division of Traffic
(Proposed Amendment)

603 KAR 5:050. Uniform traffic control devices.

RELATES TO: KRS 189.337

STATUTORY AUTHORITY: KRS 189.337

NECESSITY AND FUNCTION: KRS 189.337(2) requires [authorizes] the Transportation Cabinet, Department of Highways, to adopt a uniform system of traffic control devices. This regulation defines the system.

Section 1. The standards and specifications set forth in the Federal Highway Administration publication "Manual on Uniform Traffic Control Devices for Streets and Highways" [(1978 Edition, and subsequent amendments thereto)] shall apply to all traffic control devices installed on any publicly used highway, road or street in Kentucky. [Satisfactory operating traffic control devices in use on the effective date of this regulation may continue to be used; however, if such devices are replaced or revised, they must be made to conform with the standards and specifications of the manual.]

Section 2. A copy of the Federal Highway Administration publication "Manual on Uniform Traffic Control Devices for Streets and Highways 1988 Edition" with an effective date of January 23, 1989 [(1978 Edition and Revisions No. 1, No. 2, No. 3 and No. 4 dated December, 1979, December, 1983, September, 1984, and March, 1986 respectively)] is hereby incorporated by reference as part of this regulation.

Section 3. Copies of the Federal Highway Administration publication "Manual on Uniform Traffic Control Devices for Streets and Highways" may be viewed or copied at the Transportation Cabinet, Department of Highways, Division of Traffic in Frankfort, Kentucky from 8 a.m. until 4:30 p.m. weekdays. Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 [or at any highway district office].

O. GILBERT NEWMAN, State Highway Engineer

MILO D. BRYANT, Secretary

APPROVED BY AGENCY: September 25, 1989

FILED WITH LRC: October 6, 1989 at 11 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on November 21, 1989 at 11 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by November 16, 1989 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be

accepted until November 16, 1989. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All governmental agencies in Kentucky responsible for any traffic control devices.

(a) Direct and indirect costs or savings to those affected:

1. First year: Initially, the lenses on all left turn lights will have to be changed at a total cost of \$500 to the Transportation Cabinet.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): All remaining required changes can be implemented as part of normal maintenance on traffic control devices.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Initially, the lenses on all left turn lights will have to be changed at a total cost of \$100 to local governments.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: All remaining required changes can be implemented as part of normal maintenance on traffic control devices.

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is a federal mandate requiring all newly installed traffic control devices to comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD).

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Even though a new MUTCD was issued by the federal government and incorporated by reference in this administrative regulation, the changes since the last amendment to this administrative regulation were not extensive.

TIERING: Was tiering applied? Yes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 U.S.C. 109(d) and 402(a) as well as 23 CFR Subpart F.

2. State compliance standards. This administrative regulation requires that the 1988 version of the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD) be the standard for all traffic control devices on public highways in Kentucky.

3. Minimum or uniform standards contained in the federal mandate. 23 CFR 655.603(a) states

that the MUTCD is the national standard for all traffic control devices installed on any highway open to public travel.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET Department of Highways Division of Planning (Proposed Amendment)

603 KAR 5:070. Truck dimension limits.

RELATES TO: KRS 189.222

STATUTORY AUTHORITY: KRS 189.222(1)

NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for trucks using the State Primary Road System. This regulation is adopted to fix the maximum dimensions for all classes of highways.

Section 1. Except as provided in Section 2 of this regulation, the maximum dimensions for trucks using all class highways shall be as follows:

(1) Height: including body and load, not to exceed thirteen (13) feet and six (6) inches.

(2) Width: including body and load, not to exceed eight (8) feet.

(3) Length.

(a) Motor truck (single unit), including any part of the body or load, not to exceed forty-five (45) feet.

(b) Truck tractors and semitrailers, including any part of the body or load, not to exceed fifty-five (55) feet, except for truck tractors and semitrailer units exclusively engaged in the transportation of motor vehicles the usual and ordinary bumper overhang of the transported vehicles is excluded in the measurement of the fifty-five (55) feet.

(4) A tolerance of not more than five (5) percent shall be permitted on length before a carrier is deemed to be in violation of this section.

Section 2. Motor vehicles with increased dimensions from that specified in Section 1 of this regulation may be operated on certain highways. These specific highways will be referred to as the IDTT (increased dimension-twin trailer) system.

(1) Motor vehicles may not exceed the following width and length dimensions when operating on those highways listed in subsection (2) of this section:

(a) Width - 102 inches including any part of the body or load.

(b) Length - semitrailers - fifty-three (53) feet when operated in tractor semitrailer combination; trailers - twenty-eight (28) feet when operated in a tractor-semitrailertrailer combination, not to exceed two (2) trailers per truck tractor. There shall be no overall length limitation on motor vehicles operating on highways listed in subsection (2) of this section so long as the requirements set forth in this subsection are met. In a tractor

semitrailer-semitrailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer which allows for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length; however, when there is no second semitrailer mounted to the fifth wheel, the length of the extension shall be included in the length measurement for the semitrailer.

(2) The following highways are designated to permit the operation of motor vehicles with increased dimensions which do not exceed the limitations stated in subsection (1) of this section:

(a) The Interstate and National Defense Highway System.

(b) And the following:

Jackson Purchase Parkway - From Tennessee state line west of Fulton to US 45 Bypass.

US 45 Bypass - From Jackson Purchase Parkway west of Mayfield to Jackson Purchase Parkway north of Mayfield.

Jackson Purchase Parkway - From US 45 Bypass to I-24 in Marshall County.

Western Kentucky Parkway - From I-24 south of Eddyville to US 31W in Hardin County.

Blue Grass Parkway - From I-65 at Elizabethtown to US 60 near Versailles.

Green River Parkway - From I-65 at Bowling Green to US 60 Bypass in Owensboro.

Mountain Parkway - From I-64 east of Winchester to KY 15 north of Campton.

Mountain Parkway Extension - From end of Mountain Parkway at Campton to US 460 at Salyersville.

Daniel Boone Parkway - From US 25 north of London to KY 15 north of Hazard.

Pennyrile Parkway - From US 41A at south city limits of Hopkinsville to US 41 south of Nortonville.

Pennyrile Parkway - Concurrent with US 41 from south of Nortonville to north of Madisonville.

Pennyrile Parkway - From north of Madisonville to US 41 in Henderson.

Audubon Parkway - From Pennyrile Parkway at Henderson to US 60 Bypass in Owensboro.

Cumberland Parkway - From I-65 at Warren County line to US 27 west of Somerset.

I-471 Connector - From US 27 in Campbell County to I-471.

KY 4 - The entire circle of Lexington.

KY 10 - From new construction 4.21 miles east of Bracken County line to US 62-68 at Maysville.

KY 11 - From KY 3170 at Lewisburg to US 62-68 in Maysville.

KY 15 - From Mountain Parkway at Campton to US 119 in Whitesburg.

KY 18 - From KY 338 at Burlington to US 25 in Florence.

KY 21 - From I-75 near Berea to US 25 in Berea.

US 23 - From Ohio state line to US 119 north of Pikeville.

US 23 - From US 119 near Jenkins to Virginia state line.

US 23 Spur - From Ohio River Bridge at Ashland.

US 25 - From US 421 south of Richmond to KY 876 in Richmond.

US 25 - From KY 418 southwest of Lexington to Nandino Boulevard, in Lexington (via KY 4).

US 25 - From US 42 in Florence to Ohio state line.

US 25E - From Virginia state line to I-75

north of Corbin.

US 27 - From Tennessee state line to Ohio state line (via KY 4 in Lexington).

US 31E - From Tennessee state line to KY 90 at Glasgow (via the Scottsville Bypass and the Glasgow Bypass).

US 31W - From Tennessee state line to KY 255 at Park City (via US 31W Bypass in Bowling Green).

US 31W - From US 31W Bypass in Elizabethtown to I-264.

US 31W Bypass - From Western Kentucky Parkway to US 31W in Elizabethtown.

KY 32 - From I-64 west of Morehead to US 60 at Morehead.

KY 35 - From US 127 at Bromley to I-71 north of Sparta.

KY 36 - From I-64 south of Owingsville to US 60 at Owingsville.

KY 36 - From US 42 in Carrollton to KY 227.

US 41 - From US 68 (Main Street) in Hopkinsville to US 68 (McLean Avenue) in Hopkinsville.

US 41 - Concurrent with Pennyrile Parkway from south of Nortonville to north of Madisonville.

US 41 - From Pennyrile Parkway at Henderson to Indiana state line.

US 41A - From Tennessee state line to Pennyrile Parkway at south city limits of Hopkinsville.

KY 41A - From KY 112 in Earlington to KY 281 and KY 1751 in Madisonville.

US 42 - From I-264 northeast of Louisville to Oldham County line.

US 42 - From KY 55 at Carrollton to KY 47 at Ghent.

US 45 - From US 45 Bypass north of Mayfield to US 62 in Paducah.

US 51 - From KY 121 in Wickliffe to Illinois state line.

KY 52 - From KY 876 in Richmond to KY 499 at Irvine.

KY 55 - From Cumberland Parkway in Columbia to US 150 at Springfield.

US 60 - From US 51 in Wickliffe to I-24 in McCracken County.

US 60 - From East O'Banion Avenue in Morganfield to KY 425, the Henderson Bypass.

US 60 - From US 60 Bypass west of Owensboro to KY 69 at Hawesville.

US 60 - From I-264 east of Louisville to KY 1531 at Eastwood.

US 60 - From US 421 at Frankfort to I-75 near Lexington (via Versailles and KY 4 in Lexington).

US 60 - From junction of KY 180 near Cannonsburg to US 23 in Ashland.

US 60 - From KY 144 in Meade County to US 31W at Ft. Knox.

US 60 Bypass - From US 60 west of Owensboro to US 60 east of Owensboro.

US 61 - From Tennessee state line to KY 90 at Burkesville.

US 62 - From I-24 at Paducah to Western Kentucky Parkway.

US 62 - From KY 245 at Bardstown to US 150 at Bardstown.

US 62 - From KY 353 southwest of Cynthiana to US 27 at Cynthiana.

US 68 - From US 62 at Reidland to KY 284 in McCracken County.

US 68 - From I-24 in Trigg County to Green River Parkway at Bowling Green.

US 68 - From US 27 at Paris to Ohio state line at Maysville (via Paris Bypass).

KY 69 - From US 60 at Hawesville to Indiana

state line.

KY 79 - From KY 1051 in Brandenburg to Indiana state line.

KY 80 - From US 27 at Somerset to US 25 north of London.

KY 80 - From KY 15 at Hazard to US 23 at Allen.

KY 90 - From I-65 at Cave City to Cumberland Parkway at Glasgow.

KY 90 - From KY 61 at Burkesville to US 27 at Burnside.

KY 114 - From US 460 east of Salyersville to US 23-460 at Prestonsburg.

KY 118 - From Daniel Boone Parkway to US 421 and KY 80 northwest of Hyden.

US 119 - From KY 15 at Whitesburg to US 23 at Jenkins.

US 119 - From US 25E south of Pineville to US 421 at Harlan.

US 119 - From US 23 at Pikeville to KY 1141 northeast of Pikeville.

KY 121 - From US 45 Bypass at Mayfield to US 51 in Wickliffe.

US 127 - From US 127 Bypass north of Danville to US 127 Bypass south of Lawrenceburg.

US 127 Bypass - From US 127 south of Danville to US 127 north of Danville.

US 127 Bypass - From US 127 south of Lawrenceburg to US 127 - KY 151 north of Lawrenceburg.

US 127 - From KY 22 in Owenton to KY 35 at Bromley.

KY 144 - From KY 448 south of Brandenburg to US 60.

US 150 - From US 31E at Bardstown to US 27 at north city limits of Stanford (via 150 Bypass Danville).

KY 151 - From US 127 near Lawrenceburg to I-64 near Graefenburg.

KY 180 - From I-64 Interchange near Cannonsburg to US 60 and KY 180 at Cannonsburg.

KY 192 - From I-75 south of London to Daniel Boone Parkway east of London.

KY 205 - From Mountain Parkway at Helechawa to US 460 west of Index.

KY 212 - From KY 20 to Greater Cincinnati Airport (Boone County).

KY 227 - From KY 355 near Worthville to KY 36 at Carrollton.

US 231 - From US 60 Bypass in Owensboro to Indiana state line.

US 231 - From I-65 south of Bowling Green to US 31W Bypass in Bowling Green.

KY 236 - From KY 212 near airport to US 25 at Erlanger.

KY 237 - From KY 18 east of Burlington to I-275 in Boone County.

KY 245 - From I-65 south of Shepherdsville to US 62 at Bardstown.

KY 255 - From US 31W at Park City to I-65.

KY 259 - From Western Kentucky Parkway to US 62 in Leitchfield.

KY 281 - From US 41A in Madisonville to US 41.

KY 341 - From US 421 near Midway to I-64 near Midway.

KY 348 - From Jackson Purchase Parkway west of Benton to US 641 in Benton.

KY 418 - From US 25 south of Lexington to I-75 south of Lexington.

US 421 - From US 119 north of Harlan to 0.1 mile south of Harlan Appalachian Regional Hospital.

US 421 & KY 80 - From Daniel Boone Parkway to 2nd Street in Manchester.

US 421 - From KY 4 in Lexington to KY 341 near Midway.

US 421 - From US 460 in Frankfort to Broadway at railroad bridge.

KY 425 - From US 60 at Henderson to the Pennyryle Parkway.

US 431 - From US 60 Bypass in Owensboro to US 60 (4th Street) in Owensboro.

KY 446 - From US 31W northwest of Bowling Green to I-65.

KY 448 - From KY 1051 at Brandenburg to KY 144.

US 460 - From I-64 north of Mt. Sterling to KY 686 north of Mt. Sterling.

US 460 - From Mountain Parkway Extension to US 23 near Paintsville.

KY 555 - From US 150 at Springfield to Bluegrass Parkway.

US 641 - From Tennessee state line to KY 348 in Benton.

KY 645 - From US 23 south of Ulysses to KY 40 west of Inez.

KY 676 - From US 127 in Frankfort to US 60.

KY 686 - From KY 11 south of Mt. Sterling to US 460 north of Mt. Sterling.

KY 841 - From KY 155 near Jeffersontown to US 42 northeast of Louisville.

KY 841 - From US 31W (Dixie Highway) in southwestern Jefferson County to I-65.

KY 859/KY 57 - From I-64 east of Lexington to Lexington - Bluegrass Army Depot.

KY 876 - From I-75 at Richmond to KY 52 east of Richmond.

KY 922 - From KY 4 in Lexington to junction of I-64 and I-75.

KY 1051 - From KY 448 south of Brandenburg to KY 79.

KY 1682 - From US 68 west of Hopkinsville to Pennyryle Parkway.

KY 1958 - From KY 627 south of Winchester to I-64 at Winchester.

KY 1998 - From US 27 at Cold Springs to KY 8 at Silver Grove.

(3) All dimensions specified in this section shall not be subject to any enforcement tolerances provided in any other section.

(4) Motor vehicles with the increased dimensions specified in subsection (1) of this section shall be allowed five (5) driving miles on state maintained highways from the Interstate and the designated route network for the purpose of attaining reasonable access to terminals; facilities for food, fuel, repairs and rest; and points of loading and unloading for household goods carriers.

O. GILBERT NEWMAN, State Highway Engineer

MILO D. BRYANT, Secretary

APPROVED BY AGENCY: September 25, 1989

FILED WITH LRC: October 4, 1989 at noon

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on November 21, 1989 at 10 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by November 16, 1989 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you

may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until November 16, 1989. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All operators of larger tractor trailer combinations in McCracken County.

(a) Direct and indirect costs or savings to those affected: There will be a savings as a result of allowing a more direct route for larger vehicles to use to reach I-24 with the addition of another road segment to the IDIT.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because an evaluation of the road segment has been completed. The lane width and geometric design will allow vehicles with increased dimensions to traverse it safely.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes.

PUBLIC PROTECTION & REGULATION CABINET Kentucky State Racing Commission (Proposed Amendment)

810 KAR 1:003. Licensing.

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the licensing procedures and requirements.

Section 1. License Required. No person, legal entity, or association shall conduct any thoroughbred race for any stakes, purse, or reward in the Commonwealth without first securing a license therefor from the commission. No person shall participate in thoroughbred

racing in the Commonwealth as a horse owner, trainer, jockey, apprentice jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, without first securing a license therefor from the commission.

Section 2. Conditions Precedent to Issuance of License. Thoroughbred racing and participation therein in the Commonwealth are privileges, not rights, granted only by the commission by license subject to the hereinafter set out conditions precedent. Acceptance of a license shall be construed as consent and agreement to the following conditions precedent by the licensee and failure to comply therewith shall be grounds for immediate voidance or revocation of such license:

(1) Representations made or with license application are complete and correct.

(2) Licensee shall abide by all rulings, and decisions of the stewards and all such decisions by the stewards shall remain in force unless reversed or modified only by the commission upon proper appeal thereto. All rulings and decisions of the stewards may be appealed to the commission except those made by the stewards as to findings of fact as occurred during and incident to the running of a race and as to determination of the extent of disqualification of horses in a race for fouls committed during such race, and all such excepted rulings and decisions by the stewards shall be final with no right of review thereof by the commission or courts.

(3) Licensee shall consent to a reasonable search of his person and property in his possession by the commission or its representatives, such property being restricted to that on association grounds and including, without limiting thereby, tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort, and licensee shall consent to seizure of any object which may be evidence indicating a rule violation. Licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge to all questions asked by the commission or its representatives pertaining to racing matters.

(4) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard such horses from tampering. Upon a finding of a positive for a prohibited medication, drug, or substance, in a saliva, urine, or blood specimen taken from a horse, the trainer of such horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding such horse from tampering.

Section 3. Standards for Granting Licenses and Racing Dates to Associations. The commission may issue a license to any association which applies for same to conduct a thoroughbred race meeting on such days as the commission may deem

appropriate, if the commission finds that the proposed conduct of racing by such association would be in the best interest of the public health, safety, and welfare of the immediate community as well as to the Commonwealth, and if by reason of financial stability, track location, traffic flow, facilities for the public, facilities for racing participants and horses, character and reputation for honesty of all persons identified with the association, competence of proposed racing officials and association employees, absence of conflict with other race meetings in time and patronage area, sentiment of the community in which such association proposed to conduct a race meeting, and capability to comply with the rules and rulings of the commission, the licensing of such association would serve to nurture, promote, develop, and improve the thoroughbred industry in the Commonwealth. As a condition precedent to the issuance of such license, the commission may require a surety bond or other surety conditioned upon the payment of all taxes due the Commonwealth under KRS 137.170, 138.480, and 138.510, together with the payment of operating expenses including purses and awards to owners of horses participating in races.

Section 4. Standards for Granting Licenses to Participants in Racing. The commission may issue a license to any person who applies for same to participate in thoroughbred racing in the Commonwealth as a horse owner, trainer, jockey, apprentice jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, if the commission finds that the financial responsibility, age, experience, reputation, competence, and general fitness of the applicant to perform the activity permitted by a license, are consistent with the best interest of racing and the maintenance of the honesty, integrity, and high quality thereof.

Section 5. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, on the following grounds:

- (1) Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where applicant was denied a license or where his license was suspended or revoked;
- (2) Conviction of a crime or violation of any regulation dealing with a controlled substance;
- (3) Falsification, misrepresentation, or omission of required information in license application to the commission; failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;
- (4) Making false or misleading statements to the commission and/or the stewards, in the

course of an investigation;

- (5) Failure to comply with any order or ruling of the commission, stewards, or racing official pertaining to a racing matter;
- (6) Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person so engaged in such activity;
- (7) Person less than sixteen (16) years of age;
- (8) Person unqualified by experience or competence to perform the activity permitted by license as determined by standard examination prescribed by the stewards;
- (9) Intoxication, use of profanity, fighting or any conduct of a disorderly nature, on association grounds;
- (10) Employment or harboring of unlicensed persons required by these rules to be licensed;
- (11) Discontinuance of or ineligibility for activity for which license was issued;
- (12) Possession on association grounds, without written permission therefor from the commission or stewards, of:
 - (a) Firearms;
 - (b) Battery, or buzzer, or electrical device, or other appliance other than an ordinary whip which could be used to alter the speed of a horse in a race or workout.
- (13) Possession on association grounds by a person other than a licensed veterinarian of:
 - (a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse;
 - (b) Narcotics, or medication, or drugs, or substance which could be used to alter the speed of a horse in a race.
- (14) Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while such persons are in the discharge of their duties;
- (15) Cruelty to a horse or neglect of a horse entrusted to a licensee's care;
- (16) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;
- (17) Causing, or attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of same immediately to the stewards;
- (18) Entering, or aiding and abetting the entering of, a horse ineligible or unqualified for the race entered;
- (19) Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, would be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized;
- (20) Violation of any rule of the commission, or aiding or abetting any person in violation of any such rule.

Section 6. License Applications for Associations. Any person or legal entity desiring to conduct thoroughbred racing in the Commonwealth may apply to the commission for

association license. Such application shall be made in writing on application forms prescribed by the commission and filed at the commission general office on or before September 1 of the year preceding the calendar year in which the license is to be in force. Such application shall contain:

(1) Name and location of track. Initial applications shall be accompanied by such physical information as the commission may require.

(2) Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with such degree of ownership or type of interest shown; names and addresses of all persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary. Any corporation, partnership, or other legal entity which owns or controls a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in such legal entities with such degree of ownership or type of interest thereunto pertaining. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(3) Days and hours thereof on which racing is requested to be conducted, and number of races to be run on each day.

(4) Names of racing officials and persons responsible for track security and fire protection.

(5) Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any.

(6) An operating report on forms prescribed by the commission if applicant is currently licensed.

(7) Such other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct thoroughbred racing.

Section 7. License Application for Participants in Racing. (1) Any person other than an association required to be licensed by Section 1 of this regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license. Such application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.

(2) Applications from persons not previously licensed in Kentucky shall include the names of two (2) reputable persons who will attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.

(3) Applications from persons whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing applicant is sixteen (16) years or older.

(4) Fingerprint identification will be required of all licensees unless waived by the commission (i.e., absentee owners and casual delivery personnel who do not enter the stable area).

(5) Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one individual person desiring to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of such horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in such horses. No application shall be acted upon by the commission until the commission is satisfied a full disclosure has been made.

(6) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that such person is currently licensed as a veterinarian by the Commonwealth of Kentucky. An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not thereby be considered as participating in racing in this state.

(7) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who will attest to the technical competence of such applicant and under whose sponsorship and direction such applicant will work on association grounds.

(8) Applications from persons not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until such applicant has been administered a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of such applicant for a farrier's license.

(9) The following annual fees shall accompany the application and shall not be refundable:

(a) \$25 - Owner license and annual color registration;

(b) \$25 - Trainer, jockey, apprentice jockey, or jockey's agent license;

(c) \$25 - Veterinarian, veterinarian assistant, dental technician, assistant trainer, farrier, or apprentice farrier license;

(d) \$5 - Stable employee license (foreman, authorized agent, exercise boy, groom, hotwalker, watchman, or pony boy);

(e) \$10 - Farm manager/agent, stable-area supplier license (supplier of horse feed, tack, medication, or food vendors);

(f) \$10 - Racing department employee license, steward, racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, commission veterinarian, commission chemist, commission supervisor of pari-mutuel betting, commission director of security, commission license administrator, commission inspector, association veterinarian,

testing laboratory employee, horse identifier, valet, jockey room custodian, clerk of scales, entry clerk, photo finish operator, film patrol or video tape operator and projectionist, flagman, or outrider, association security department including police chief, detectives, policemen, watchmen, fire, ambulance drivers and attendants; track superintendent, groundsman, mechanics, carpenters; maintenance department manager and employees;

(g) \$10 - Mutuel department employee license, manager, calculator, sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizer employee;

(h) \$10 - Occupational license, admission department manager and employees; concessions manager and employees; parking manager and employees; all other persons employed by the association or employed by a person or concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting.

(i) \$5 - Temporary occupational license for persons to be employed in occupations listed in paragraph (h) above for ten (10) days or less during a calendar year.

Section 8. Licensing Committee. The commission may appoint a licensing committee including the commission secretary and commission steward or their designated representative. Such licensing committee shall review all applications for all licenses, and forward all such applications to the commission with recommendations thereon, subject to security checks, for final action. Such licensing committee may issue to a license applicant a temporary permit to participate in the activity for which such license application was made pending administrative processing and final action on such license application by the commission.

Section 9. Term of License. Licenses issued by the commission for participation in thoroughbred racing shall be valid from the date of issuance through the calendar year shown on such license at all race meetings conducted by associations in the Commonwealth during such calendar year, unless sooner suspended, revoked, or voided. The commission may renew any license and any such renewal shall not be construed to be a waiver of or to condone any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the licensee therefor. The validity of a license does not preclude or infringe upon the common law right of associations to eject or exclude any persons, licensed or unlicensed, from association grounds.

Section 10. Possession of License Required. No person required to be licensed by these rules may participate in any activity required to be licensed on association grounds during a race meeting without having been issued a valid license therefor and having same in his possession. All licenses specified under Section 7(9)(b) to (f) of this regulation shall include a color photograph of the licensee and shall be openly displayed on the backside of association grounds at all times.

Section 11. Applicability of Rules and Rulings to Household. Rules pertaining to, and rulings against, licensees shall apply in like force to the spouse and members of the immediate family or households of the licensee, unless there is a showing on the part of an affected spouse, or affected member of the immediate family or household of the licensee, and the stewards in their discretion so find, that the continuation of participation in racing by such affected person will in no way circumvent the intent of the rule, or effect of the ruling, by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or person ineligible to participate in a particular activity.

Section 12. Notice for Discontinuance of Employment. Licensed associations, racing officials, owners, trainers, jockeys, agents, farriers, stable employees, and all other licensees who have accepted with advance notice the conditions under which a race meeting is planned to be conducted, shall before terminating employment, engagements, or activities under such conditions, so notify the commission and respective interested persons or associations of such intention at least fifteen (15) days before such termination. The commission shall upon notice to parties in interest conduct a hearing on the matter. If the commission finds that the cause of termination is unreasonable, unlawful, or contrary to these rules, the commission shall so advise all parties in interest and shall take appropriate action against offending parties. If the commission finds that the cause of termination is reasonable, lawful, and not contrary to these rules, the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.

LYLE G. ROBEY, Chairman

APPROVED BY AGENCY: October 13, 1989

FILED WITH LRC: October 13, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing will be held on November 28, 1989 at 10 a.m. at the offices of the Kentucky State Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky State Racing Commission, P.O. Box 1080, Lexington, Kentucky 40588.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael A. Fulkerson

(1) Type and number of entities affected: Approximately 95 licensees of the KSRC.

(a) Direct and indirect costs or savings to those affected:

1. First year: There is no changes in the financial cost or savings: only a more specific title for existing licensees.

2. Continuing costs or savings: See note below.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Already in place.

(2) Effects on the promulgating administrative body: Computer program already in place.

(a) Direct and indirect costs or savings: There are none.

1. First year: See note below.
 2. Continuing costs or savings:
 3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements: Already in place.
 - (3) Assessment of anticipated effect on state and local revenues: There are none.
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: This represents a fine tuning of the existing licensing system.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are none.
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments: Two new categories of licenses are being created to more accurately identify their job: assistant vets are getting a distinct license apart from a vet and farm managers get their own identity. There is no change in the fee.
- TIERING: Was tiering applied? No. All licensees of the same type should pay the same fee.

PUBLIC PROTECTION & REGULATION CABINET
Kentucky State Racing Commission
(Proposed Amendment)

810 KAR 1:020. Hearings, reviews and appeals.

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS 230.240

NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation outlines the procedures and requirements relating to hearings, reviews, and appeals.

Section 1. Stewards' Hearing. (1) Before holding any stewards' hearing provided for under these rules, notice in writing must be given to any party charged with a violation other than a routine riding offense occurring in a race unless waived in writing by the person charged.

(2) The notice required by Section 2(1) of this regulation shall:

(a) Notify the party of the specific rule or rules, the infraction for which he is charged, and a brief statement of the facts supporting said charge.

(b) State the time and place of hearing.

(c) State that the party charged may be represented by legal counsel, or by a representative of any racing trade organization of which he is a member.

(3) All stewards' hearings shall be closed and the stewards shall cause no public announcement to be made concerning a matter under investigation until conclusion of the hearing, and the party charged has been notified of the decision.

(4) The state steward shall conduct the hearing in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence.

(5) All testimony of such hearings shall be

given under oath, and a record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript. The party charged with the violation may, however, waive the recording and the transcription of the testimony. The stewards will not be required to receive testimony under oath in cases where their ruling is based solely upon a review of the video tapes of a race.

(6) If, at the conclusion of said hearing the stewards shall find that a rule has been violated, they shall promptly issue a written ruling which sets forth the full name of every person charged with the rule violation, identification of such persons, if licensed, by license classification and address, the rule number and pertinent parts of the rule violated, the finding by the stewards as to the violation of such rule, and the penalty affixed by the stewards. Copies of such rulings shall be delivered to each party in interest, delivered to the commission, posted in the racing secretary's office, and forwarded to the office of the National Association of State Racing Commissioners.

(7) At least the state steward and one (1) association steward shall be present at all times at the hearing.

(8) Review and appeal. Any party who is the subject of any order or ruling of the stewards may apply to the commission for a review of such stewards' order or ruling other than as to extent of disqualification for a foul in a race or as to a finding of fact as occurred during an incident to the running of a race.

(9) Application for review. An application to the commission for review of a steward's order or ruling must be made within ten (10) days after such order or ruling is issued in writing, and shall:

(a) Be in writing and addressed to the commission secretary at the commission general office.

(b) Contain the signature of the applicant, and the address to which notices may be mailed to applicant.

(c) Set forth the order or ruling requested to be reviewed and the date thereof.

(d) Set forth the reasons for making such applications.

(e) Request a hearing.

Section 2. Commission Hearings. Before holding any commission hearing provided for under these rules, the commission shall:

(1) Give written notice forthwith to all parties personally or by mail. If indispensable and necessary parties propose a large class, notice shall be served upon a reasonable number thereof as representatives of such class. Such notice shall include a statement of:

(a) Time and place of such hearing as designated by the commission and chairman, but such time shall not be less than five (5) days and no more than thirty (30) days after service of notice unless at the request of a party and in order to provide a fair hearing;

(b) The legal authority and jurisdiction under which the hearing is to be held;

(c) Specific designation of the particular rules or statutes alleged to have been violated; and

(d) A clear and concise factual statement sufficient to inform each party with reasonable definiteness of the type of acts or practices

alleged to be in violation of the act or rules promulgated thereunder. In fixing the times and places for hearings, due regard shall be had for the convenience of the parties and their representatives.

(2) The right of any party to subpoena witnesses and documentary evidence through the commission, employing such rights of discovery and use of subpoenas as would be available under the Kentucky Rules of Civil Procedures, pretrial and trial procedures shall be governed by Kentucky Rules of Civil Procedures.

Section 3. Special Prosecutor. (1) The commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a rule violation if the matter involved a rule violation and requires a proceeding of an adversary nature; such prosecutor being one who has had no prior participation in the matter of any kind. The commission also may request that the Attorney General, or a member of his staff other than the special prosecutor, serve as law officer for the commission to assist the presiding officer in rendering decisions of a judicial nature. The special prosecutor shall have the services of the Kentucky State Police for investigatory purposes.

(2) The commission shall permit all parties that so desire to be represented by counsel; shall permit all parties to respond and present evidence and argument on all issues involved; and shall permit all parties to examine commission memoranda and data and all other information which is or has been considered by the commission in investigating and hearing the matter or which may be offered as evidence.

(3) The commission shall administer oaths and issue subpoenas upon its own motion or when requested by an appearing party. Each party shall pay the cost of its subpoenas and the expenses of its witnesses. When a subpoena is disobeyed, any party may apply to the Franklin Circuit Court for an order requiring obedience; failure to comply with such order shall be cause for punishment as a contempt of the court under KRS 421.110.

(4) Unless varied by the commission, the order of proof in the de novo hearing may be:

- (a) Evidence presented by the prosecution as to alleged violations of a rule;
- (b) Cross examination of prosecution witnesses; redirect examination;
- (c) Evidence presented by a party charged, in defense or explanation;
- (d) Cross examination of party charged, and his witnesses; redirect examination;
- (e) Rebuttal or other evidence, on behalf of the prosecution or any other party in interest as deemed pertinent by the presiding officer;
- (f) Closing argument by party charged; and
- (g) Closing argument by prosecution.

(5) The commission shall keep a record of each hearing which shall include:

- (a) All pretrial and trial pleadings, motions, and interlocutory rulings;
- (b) All evidence received or considered;
- (c) A statement of matters officially noticed;
- (d) Questions and offers of proof and rulings thereon;
- (e) Proposed findings and exceptions;
- (f) All commission memoranda or data submitted to the commission in connection with the commission's consideration of the case;

(g) All stenographic recordings taken and transcriptions made; oral proceedings, or any part thereof, shall be reported stenographically upon request of any party and shall be paid for by such parties desiring copies; and

(h) Final adjudication including findings of fact, based exclusively on evidence presented at the hearing and matters officially noticed, and any decision, opinion, and ruling by the commission on the matter.

(6) The commission may exclude evidence that is irrelevant, immaterial, or unduly repetitious and may admit evidence that would be inadmissible under the Rules of Civil Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

(a) Objections to evidentiary offers may be made and shall be noted in the record; and

(b) All or part of the evidence may be received in written form if the interest of the appearing parties will not be substantially prejudiced thereby.

(7) The commission may take official notice of technical facts or customs or procedures common to racing, but all appearing parties to the hearing shall be duly notified. Appearing parties shall have an opportunity to contest facts so noticed, including commission memoranda or commission data.

(8) Members of the commission participating in the adjudication of a matter before it shall not, directly or indirectly:

(a) In connection with any issue of fact in the matter before the commission, consult with any person or party who was engaged in the investigation or prosecution of the matter before the commission, or conduct any personal investigation outside the record, without giving an opportunity for all appearing parties to participate.

(b) In connection with any issue at law, no party or representative shall be consulted without giving all parties an opportunity to participate.

(9) The commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order, or by default.

(10) Upon conclusion of the hearing, the commission shall take the matter under advisement, shall render a decision as promptly as possible, and shall issue a ruling in final adjudication of the matter. Such ruling shall set forth the full name of every person charged with a rule violation; identification of such person, if licensed, by license classification and address; the rule number and pertinent parts of the rule alleged to have been violated; a separate statement of findings of fact; a separate statement of conclusions of law; a separate statement of reasons for the decisions; and penalties fixed by the commission, if any. Copies of such ruling shall be delivered to each party in interest, posted in the racing secretary's office of the association where the matter arose, and forwarded to the office of the National Association of State Racing Commissioners.

Section 4. Appeal from Commission Order or Ruling. Any person or licensee aggrieved by any order or decision of the commission may appeal same to the Franklin Circuit Court. Such appeal must be made within ten (10) days after the entry of such order or decision of the

commission by posting and filing in the office of the Franklin Circuit Court Clerk:

(1) A bond to secure the costs of the action in a sum approved by the circuit clerk, said bond to be secured by corporate surety approved by the Department of Insurance.

(2) An attested copy of the order or decision appealed from.

(3) An attested copy of the transcript of evidence heard by the commission, the cost of such transcript of evidence heard by the commission, the cost of such transcript being borne by the appellant. Appeals from a commission order or decision shall be taken as provided in KRS 243.560 to 243.590.

Section 5. Suspensions Pending Appeal. Any person alleged to have committed a violation under subsection (1) of this section may request a stay of imposition of the steward's sanction. Pending appeal, a hearing on such request for stay shall be held within forty-eight (48) hours of the request for a stay by the commission. In the event the commission is not able to hold a hearing within forty-eight (48) hours, the stay shall be automatically granted. It shall be the policy of the commission to grant stays, unless:

(1) In any case where a licensee is alleged to have committed a flagrant violation of the prescribed rules and regulations of racing which presents a clear and present danger to the immediate integrity of racing; and

(2) Wherein it is impossible for the commission to secure necessary scientific evidence or indispensable witnesses within forty-eight (48) hours, then the commission or its designated hearing officer may refuse a request for the stay of any penalty imposed, as long as a hearing is held no later than thirty (30) days from the initial steward's determination of a violation.

Section 6. Continuances. (1) All applications for continuance made prior to a hearing shall be in writing, shall set forth the reasons therefor, and shall be filed with the commission after giving notice of such application by mail or otherwise to all parties or their attorney. At the time of the hearing, applications for continuance may be made orally. If requested, and in the manner prescribed by the commission, the party applying for the continuance shall substantiate the reasons contained in such application.

(2) When application is made for continuance of a cause because of the illness of an applicant, licensee, witness, or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

(3) An application for continuance of any commission hearing must be received by the commission at least ninety-six (96) hours prior to the time fixed for a hearing. An application received by the commission within the ninety-six (96) hour period will not be granted unless a satisfactory arrangement in writing is made with the commission for the payment of all expenses resulting from such continuance. However, the commission may waive payment of such expenses for extenuating circumstances.

(4) If the commission approves the application for continuance, the commission forthwith shall set a date for the continued hearing.

Section 7. Commission Hearing Officer. (1) Any hearing authorized or required by KRS 230.210 to 230.360 may be conducted by the commission, or may be conducted by a hearing officer appointed by the commission to serve in its place. Such a hearing shall be conducted in the name of the commission at any time or place designated by the chairman. The hearing officer may, in receiving evidence on behalf of the commission, make such rulings affecting the competency, relevancy, and materiality of such evidence to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case. The commission may require the entire record to be certified to it for initial decision, and the hearing officer shall submit written findings of fact, conclusions of law and recommendations which shall be incorporated in and become a part of the record. In the absence of a requirement by the commission that a record be certified to it for initial decision, the hearing officer shall render a decision, and the absence of either an appeal to the commission, the hearing officer's decision shall become the decision of the commission.

(2) A hearing officer may be a full-time employee, serve by contract, or be paid upon a per diem basis in the discretion of the commission.

Section 8. Disqualification of Commission Members and Hearing Officer. A commission member or hearing officer may at any time withdraw from the proceeding if he deems himself disqualified, and upon the filing in good faith before the termination of the hearing of an affidavit of personal bias or disqualification of any such member or hearing officer, the commission shall determine the matter as a part of the record and decision in the case. In the event of such withdrawal or disqualification, any other member of the commission, if there be such participating in the hearing, shall have the authority to complete the hearing and to participate in the decision. In cases where the hearing is conducted by the commission, members participating in the decision shall hear all the evidence, or shall read the evidence prior to making a decision thereon. At least a majority of the members of the commission must hear all the evidence or read the record before making a final decision.

LYLE G. ROBEY, Chairman

APPROVED BY AGENCY: October 13, 1989

FILED WITH LRC: October 13, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing will be held on November 28, 1989 at 10 a.m. at the offices of the Kentucky State Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky State Racing Commission, P.O. Box 1080, Lexington, Kentucky 40588.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael A. Fulkerson

(1) Type and number of entities affected: Potentially all licensees.

(a) Direct and indirect costs or savings to those affected: See note below.

1. First year:
 2. Continuing costs or savings:
 3. Additional factors increasing or decreasing costs (note any effects upon competition):
 - (b) Reporting and paperwork requirements:
 - (2) Effects on the promulgating administrative body: See note below.
 - (a) Direct and indirect costs or savings:
 1. First year:
 2. Continuing costs or savings:
 3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements:
 - (3) Assessment of anticipated effect on state and local revenues: There are none.
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: See note below.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are none.
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments: In October, 1983, 810 KAR 1:020 was last amended and there are two phases which were inadvertently omitted. This was recently discovered by comparing KAR to the Rules of Racing.
- TIERING: Was tiering applied? See note above.

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Building Codes Enforcement
(Proposed Amendment)

815 KAR 7:010. Administration and enforcement.

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, and parts thereof, which shall establish standards for construction of all buildings in the state. This regulation establishes the administration and enforcement sections of the Kentucky Building Code. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A by making amendments and deletions in Sections 1, 22, 23 and 24.

Section 1. Definitions Used in Title 815, Chapter 7. (1) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "BOCA" means Building Officials and Code Administrators International, Inc.

(3) "Building" as defined by KRS 198B.010(4). [means any combination of materials, whether portable or fixed, which comprises a structure affording facilities or shelter for any human occupancy, whether infrequent or regular. The word "building" shall be construed wherever used herein as if followed by the words "or part or parts thereof and all equipment therein" unless the context clearly requires a different meaning. "Building" shall also mean swimming pools constructed below grade on site, but not swimming pools assembled above grade on site.

"Building" shall not mean a mobile home, or a farm dwelling or other farm buildings and structures incident to the operation and maintenance of the farm if such farm structures are located outside the boundary of a municipality and are not used in the business of retail trade or used as a place of regular employment for ten (10) or more people or structures used in the storage or processing of timber products.]

(4) "Commissioner" as defined by KRS 198B.010(11). [means the Commissioner of the Department of Housing, Buildings and Construction.]

(5) "Department" as defined by KRS 198B.010(13). [means the Department of Housing, Buildings and Construction.]

(6) "Fire official" means the chief of the fire department or of the fire prevention bureau, or if there is not a jurisdiction fire department or fire prevention bureau, such officer as shall be designated by the appointing authority of the jurisdiction, or his duly appointed representative, to enforce the provisions of KRS 227.300 and 815 KAR 10:020.

(7) "Industrialized building system" or "building system" as defined in KRS 198B.010(18) and applies to [means a structure or component thereof which is wholly or in substantial part fabricated in an off-site manufacturing facility for installation or assembly on a permanent foundation at a building site in Kentucky. "Industrialized building system" includes:] a building of any size or for any use all or any component part of which is of closed construction made from precast concrete panels, or precut wood sections fabricated to individual specifications in an off-site manufacturing facility and assembled in accordance with the manufacturer's instructions.

(8) "KAR" means Kentucky Administrative Regulations.

(9) "KBC" means the Kentucky Building Code as established in this chapter.

(10) "KRS" means Kentucky Revised Statutes.

(11) "Major structural change" means structural alterations and structural repairs made within any twelve (12) month period costing in excess of fifty (50) percent of the physical value of the structure, as determined by comparison of the extent/value of the alterations involved and the replacement value of the structure at the time the plans for the alterations are approved, using the BOCA Chart for Construction Cost.

(12) "Person" means a person, partnership, corporation or other legal entity.

(13) "Single family dwelling" means one (1) unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which is not connected to any other unit or building.

(14) "Trade or brand name house" means any single structure made of precut or prefabricated panels, sections or individual pieces that are sold or prefabricated under a name that identifies both the manufacturer and a particular type of structure he makes, and that are assembled on a permanent foundation by conventional home-building and electrical and plumbing installation techniques.

Section 2. Scope. This regulation shall supersede any and all other conflicting

administration and enforcement provisions which may be incorporated by reference within the KBC.

(1) The KBC shall control all matters concerning the construction, alteration, addition, remodeling, use and occupancy classifications of all buildings in the state.

(2) Trade or brand name houses shall be constructed in accordance with the applicable provisions of the KBC.

(3) The provisions of the KBC relating to single family dwellings, that are not trade or brand name houses or industrialized building systems, shall be mandatory only after a local government, by ordinance, extends the application of the KBC to those units. However, the state plumbing code and the national electrical code shall be applicable to these units, whether or not the local government passes an ordinance. A local government may not enforce any building code other than the KBC on such units.

(4) Unless otherwise specifically provided within the KBC, all references to article or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of the KBC.

(5) The provisions of this code relating to the construction, repair, alteration, enlargement, restoration and moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local government authority as historic buildings, subject to the approval of the board of appeals when such buildings are judged by the building official to be safe and in the interest of public health, safety and welfare regarding any proposed construction, alteration, repair, enlargement, restoration and relocation. The building official may require submission of architectural and engineering plans and specifications bearing the professional seal of the designer prior to a determination.

(6) The KBC shall be construed to secure its expressed intent which is to secure public safety, health and welfare insofar as they are affected by building construction quality, electrical systems, plumbing, energy, boiler safety, handicapped accessibility, life safety from hazards of fire and explosion and other disasters. It is the further expressed intent of this code to avoid duplicative plan review and inspection of new construction and to gather together in one (1) set of regulations all the requirements relating to the construction of buildings in the state to enable builders, owners and building officials to be adequately informed.

Section 3. Applicability. (1) The provisions of the KBC shall cover all matters affecting or relating to buildings, and structures, as set forth in Section 2 of this regulation.

(2) No person shall construct a building or structure, extend, repair, remove or alter in violation of these provisions, except for ordinary repairs as defined in Section 4 of this regulation, and except further that the raising, lowering or moving of a building or structure as a unit necessitated by a change in legal grade or widening of a street shall be permitted provided the building or structure is not otherwise altered or its use or occupancy changed.

(3) Any requirement essential for structural, fire or sanitary safety of a building essential for the safety of the occupants thereof, and which is not specifically covered by this code, shall be determined by other regulations of the department or other applicable law.

(4) Any person who violates any provision of the article or any other provision of the Kentucky Building Code shall be subject to the penalties provided in Section 19 of this regulation.

Section 4. Ordinary Repairs. Ordinary repairs to structures may be made without application or notice to the building official. Ordinary repair means any nonstructural reconstruction or renewal of any part of an existing building for the purpose of its maintenance or decoration, and shall include, but not be limited to, the replacement or installation of nonstructural components of the building such as roofing, siding, windows, storm windows, insulation, drywall or lath and plaster, or any other replacement, in kind, that does not alter the structural integrity, alter the occupancy or use of the building, or affect, by rearrangement, exitways and means of egress; but shall not include additions to or alteration of, or relocation of any standpipe, water supply, sewer, drainage, gas, soil, waste, vent or similar piping, electric wiring or mechanical equipment including furnaces and hot water heaters or other work affecting public health or safety.

Section 5. Installation of Service Equipment. When the installation, extension, alteration or repair of an elevator, moving stairway, mechanical equipment, refrigeration, air conditioning or ventilating apparatus, plumbing, gas piping, electrical wiring, heating system or other equipment is specifically controlled by the provisions of this code, it shall be unlawful to use such equipment until a certificate of approval has been issued therefor by the building official or other agency having jurisdiction.

Section 6. Existing Structures. (1) Continuation of existing use. The legal use and occupancy of any structure existing on the date of adoption of this code or for which it has been heretofore approved may be continued without change, except as may be specifically covered in this code, the existing structures or fire prevention codes set forth in 815 KAR 10:020 or as may be deemed necessary by the building official for the general safety and welfare of the occupants and the public.

(2) Change in use. It shall be unlawful to make any change in the use or occupancy of any structure or portion thereof which would subject it to any special provisions of this code without approval of the building official; such approval shall be granted if the building official finds that such structure meets the intent of the provisions of law governing building construction for the proposed new use and occupancy, and that such change does not result in any greater hazard to public safety or welfare. In making his decision, the building official may require a written opinion from a design professional.

(3) Additions, alterations or repairs. Additions, alterations or repairs may be made to

any structure without requiring the existing structure to comply with all the requirements of this code, provided such work conforms to that required of a new structure. Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building. Any building plus new additions shall not exceed the height, number of stories and area specified for new buildings.

(4) Alterations or repairs to an existing structure which are nonstructural and do not adversely affect any structural member of any part of the structure having a required fire resistance rating may be made with the same materials of which the structure is constructed.

Section 7. Departments of Building Inspection.

(1) Each local government singularly or by association with other local governments shall employ a building official or inspector and other code enforcement personnel as necessary to enforce this code within its jurisdiction. The department shall be responsible for the enforcement of this code as it pertains to the buildings assigned by law to it.

(2) All building officials shall be appointed by the chief appointing authority for the respective jurisdictions and shall meet the qualifications for the position which may be established by the appointing authority, in addition to the requirements for certification of Kentucky building code inspectors as detailed in 815 KAR 7:070.

(3) Official records shall be kept of all business and activities of the various local building departments or state building departments specified in provisions of the KBC, and all such records shall be open to the public inspection at all appropriate times under the terms and conditions of KRS Chapter 61.

Section 8. Duties and Powers of the Building Official. The local governments shall designate the persons to be charged with the responsibility of enforcing the KBC within its community and it shall neither adopt nor enforce any ordinance regulating buildings which conflicts with the KBC. The local building official shall be responsible for the examination and approval of plans and specifications and the inspections necessary to determine compliance for the following buildings:

(1) All buildings classified as storage, residential, miscellaneous or utility occupancies so long as they do not exceed three (3) stories in height or 20,000 square feet of floor area.

(2) All buildings classified as assembly business or mercantile occupancies having a capacity which does not exceed 100 persons.

(3) All churches having a capacity of 400 or less persons and 6,000 or less square feet of total floor area.

(4) All buildings classified as factory or industrial occupancies having a capacity which does not exceed 100 persons.

(5) Buildings owned by the Commonwealth are not subject to local plan review, inspection or approval, regardless of size, occupant load or occupancy classification.

Section 9. Duties and Powers of the Department. (1) It shall be the responsibility of the department to review plans and

specifications, issue permits, make inspections and to determine compliance with the KBC for the following buildings:

(a) All buildings classified as assembly occupancies having a capacity in excess of 100 persons, except churches having a capacity of 400 or less persons and 6,000 or less square feet of total floor area;

(b) All buildings classified as educational occupancies;

(c) All buildings classified as institutional occupancies;

(d) All buildings classified as business and mercantile occupancies having a capacity in excess of 100 persons;

(e) All buildings classified as industrial and factory occupancies having a capacity in excess of 100 persons;

(f) All frozen food locker plants;

(g) All buildings classified as high hazard occupancies;

(h) All other buildings containing in excess of three (3) stories or 20,000 square feet of floor area;

(i) All industrialized building systems regardless of occupancy classification;

(j) All buildings owned by the Commonwealth, regardless of occupancy classification or size.

(2) Any local government may petition to the department for additional plan review responsibility. Such petition shall include the evidence of the local governments capability to perform those functions, as required by regulations of the board. Denials of such petitions are appealable to the board.

(3) The appropriate official shall make all the required inspections, or he may accept reports of inspection by authoritative and recognized services or individuals; and all reports of such inspections shall be in writing and certified by a responsible officer of such authoritative service or by the responsible individual.

(4) The building official or his authorized representative should carry proper credentials of his respective office for the purpose of inspecting buildings and premises and the performance of his duty under this code.

(5) The board shall have the powers as may be necessary in the interest of public safety, health and general welfare, to adopt and promulgate amendments to the code and other rules and regulations which are necessary to implement this code and by means of the appeals board procedures to issue interpretations which shall be binding upon the appellee and the building officials. The building official shall implement the provisions of this code to secure the intent thereof.

(6) In the absence of provisions not specifically contained in this code or approved rules and orders, the regulation, specifications and standards listed in Appendix A "Referenced Standards" of the 1987 Edition of BOCA National Building Code filed herein by reference, shall be deemed to represent accepted engineering practice with respect to materials, equipment, system or method of construction therein specified, and shall therefore be acceptable.

Section 10. New Materials and Modifications.

(1) It is the purpose of the KBC to set forth performance objections so as to facilitate new technologies, techniques and materials; therefore, alternate materials and equipment may

be used provided such an alternative has been tested and listed by nationally recognized testing and research laboratories approved by the board.

(2) The building official may accept supporting data to assist him in his determinations: duly authenticated research reports from BOCA or from other approved authenticated sources for all materials or assemblies proposed for use which are not specifically provided for in the KBC.

(3) Used materials, equipment and devices may be used provided they have been retested and placed in good and proper working condition and approved by the building official.

(4) When there are practical difficulties involved in carrying out structural or mechanical provisions of this code or of an approved rule, the building official having plan review responsibility may vary or modify such provision upon application of the owner or his representative only if the spirit and intent of the law shall be observed and equivalent safeguards provided. The application for modification and the final decision of the building official shall be in writing. When a modification is granted by a local building official, a copy of the application and the decision shall be forwarded to the department and the local fire official.

(5) The board may withdraw authority for plan review from a local building department where it finds, upon petition of the department, that the local inspection agency is not adequately performing any portion of its program and, thereafter, allow the department to preempt that portion of a local program.

Section 11. Inspections. (1) Before issuing a permit the appropriate building officials may examine or cause to be examined all buildings, structures and sites for which an application has been filed for a permit required by this code. No construction shall begin on buildings covered by this regulation until a local building official has issued a permit for such construction and an official representing the department has issued a letter releasing the plans for construction (if it has plan review responsibility).

(2) After issuing a building permit for a building over which he has plan review responsibility the building official shall conduct inspections from time to time during and upon completion of work and he shall maintain a record of all such examinations and inspections and of all violations of the KBC.

(3) The building official may accept reports of approved inspection services which satisfy the requirements of the appropriate governmental entity.

(4) Inspections for KBC compliance of trade or brand name homes shall be the responsibility of the local building official.

(5) In-plant inspections in production and manufacturing facilities for industrialized building systems as well as on-site inspection shall be conducted by the department or its authorized agent pursuant to 815 KAR 7:020. The local building official shall be responsible to inspect such system only for location under applicable local ordinances.

(6) Upon completion of the building, the owner or agent of the facility shall request a final inspection; the building official shall set a

time for said inspection and notify the owner or agent. If compliance with the approved plans and permit has been achieved, a certificate of occupancy shall be issued, as described in Section 17 of this regulation. If compliance has not been achieved, any violations shall be noted and immediately communicated to the owner or agent and the fire official.

(7) The building official shall cooperate with the fire official by allowing the fire official to inspect all buildings during construction. Any recommendations made by the fire official relating to fire safety in construction of a building shall be considered by the building official and if a certificate of occupancy is issued contrary to said written recommendations the building official shall give written notification of his decision to the fire official and the department at once.

Section 12. Right of Entry. Applicants for building permits shall be deemed to consent to inspection during construction and upon completion of construction for the purpose of determining that such building is constructed in compliance with the Kentucky Building Code, and the inspector may enter upon the premises during any reasonable hour.

Section 13. Application for Permit Required.

(1) It shall be unlawful to construct, enlarge, or alter a structure; or change the type of occupancy of a building requiring greater strength, exiting or sanitary provisions; or to change to another use; or to install or alter any equipment for which provision is made or the installation of which is required by KBC, without first filing an application with the appropriate building officials in writing and obtaining the required permit therefor; except that ordinary repairs, as defined in Section 4 of this regulation, which do not involve any violation of KBC shall be exempt from this provision.

(2) The application for a permit shall be submitted in writing and in such form as the department may prescribe and shall be accompanied by the required fee.

(3) The application shall contain a general description of the proposed work, its location, the use and occupancy of all parts of the building or structure and of all portions of the site or lot not covered by the building or structure, and such additional information as may be required by the building official.

(4) Application for permit shall be made by the owner or lessee of the building or structure, or agent of either, or by the licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the owner in fee, it shall be accompanied by a duly verified affidavit of the owner or the qualified person making the application that the proposed work is authorized by the owner in fee and that the applicant is authorized to make such application. The full names and addresses of the owner, lessee, applicant and of the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application.

(5) The application for the permit shall be accompanied by specifications and plans drawn to scale, with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. The building official

shall cooperate with the fire official by allowing the fire official to review all plans. Any recommendations made by the fire official relating to fire safety in construction of a building shall be considered by the building official and he shall report his decision to the fire official at once. When quality of materials is essential for conformity to the KBC, specific information shall be given to establish such quality; and the KBC shall not be cited, or the term "legal" or its equivalent be used, as a substitute for specific information. The building official may waive the requirement for filing plans when the work involved is of a minor nature.

(6) Site plan. There shall also be a site plan showing to scale the size and location of all the new construction and all existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades; and it shall be drawn in accordance with an accurate boundary line survey.

(7) Engineering details. The building official may require adequate details of structural, mechanical and electrical work including computations, stress diagrams and other essential technical data to be filed. All engineering plans and computations shall bear the signature of the responsible design professional. Plans for buildings more than two (2) stories in height shall indicate how required structural and fire resistance rating integrity will be maintained, and where a penetration will be made for electrical, mechanical, plumbing and communication conduits, pipes and systems.

(8) An application for permit for any proposed work should be deemed to have been abandoned six (6) months after date of filing, unless such application has been diligently prosecuted or a permit shall have been issued; except that for reasonable cause, the building official may grant one (1) or more extensions of time for additional periods not exceeding ninety (90) days each.

(9) Subject to the limitations of Section 13 of this regulation, amendments to a plan, application or other records accompanying the same may be filed at any time before completion of the work for which the permit is sought or issued; and such amendments shall be deemed a part of the original application and shall be filed therewith.

(10) The building official may revoke a permit or approval issued under the KBC in case of any false statements or misrepresentation in the application or on the plans.

Section 14. Permits Required. (1) The building official shall examine or cause to be examined all applications for permits and amendments thereto within a reasonable time after filing. If the application or the plans do not conform to the requirements of all pertinent laws, he shall reject such application in writing, stating the reasons therefor. If he finds that the proposed work conforms to the requirements of this code and all laws and ordinances applicable thereto, he shall issue a permit therefor as soon as practicable.

(2) Any permit issued shall become invalid if the authorized work is not commenced within one (1) year after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six (6) months after the time of

commencing the work.

(3) The KBC shall not require changes in the plans, construction or designated use of a building for which a lawful permit has been theretofore issued or otherwise lawfully authorized by approved plans, so long as the substantial construction on the project has commenced within one (1) year from the date the permit was issued.

(4) The building official shall attach his signature to every permit, or he may authorize a subordinate to affix such signature thereto.

(5) The building official shall record and communicate to the owner or agent, the terms and conditions related to his approval to commence construction.

(6) The building official may issue a permit for the construction of foundations or any other part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted, provided adequate information and detailed statements have been filed complying with all the pertinent requirements of this code. The holder of such permit for the foundations or other part of a building or structure shall proceed at his own risk with the building operation and without assurance that a permit for the entire structure will be granted.

(7) Approved plans. The building official shall stamp or endorse in writing the corrected plans approved, and that set shall be available at the building site, open to inspection of the building official or his authorized representative at all reasonable times.

(8) A true copy of the building permit shall be available on the site of operation open to public inspection during the entire time of prosecution of the work and until the completion of the same.

Section 15. Conditions of Permit. (1) A permit shall not be issued until the fees prescribed by the department or the local government have been paid. The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of the KBC, except as specifically stipulated by modification or legally granted variation as described in the permit.

(2) All work shall conform to the appropriate application and plans for which the permit has been issued and any approved amendments thereto and shall be located strictly in accordance with the approved plot plan and any local ordinances governing the location of the building.

(3) A lot shall not be changed, increased or diminished in area from that shown on the official plot site plan, unless a revised plan showing such changes accompanied by the necessary affidavit of owner or applicant shall have been filed and approved, except that such revised plan will not be required if the change is caused by reason of an official street opening, street widening or other public improvement.

Section 16. Fees. (1) A permit to begin work for new construction, alteration, removal, or other building operations shall not be issued until the fees prescribed by law shall have been paid to the department or local building department, nor shall an amendment to a permit necessitating an additional fee because of an

increase in the estimated cost of the work involved be approved until the additional fee shall have been paid.

(2) The payment of the fee for construction, alteration, and for all work done in connection with or concurrently with the work contemplated by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that may be prescribed by law or ordinance for water taps, sewer connections, electrical permits, erection of signs and display structures, marquees or other appurtenant structures, or fees of inspections, certificates of use and occupancy or other privileges or requirements, both within and without the jurisdiction of building inspection.

(3) The fee for building permits and other functions performed pursuant to KRS Chapter 198B may be designed to fully cover the cost of the service performed; and the department and each local government is authorized to establish by approved rules or ordinances a schedule of unit rates for buildings and structures of all use groups and type of construction as classified and defined in the KBC.

Section 17. Certificate of Use and Occupancy.

(1) No building on which site preparation and assembly were begun, after the Kentucky Building Code becomes effective as to that building, shall be occupied until the appropriate building official issues a certificate of occupancy certifying that the building was constructed in conformance with the standards of the Kentucky Building Code, or assembled or installed in conformance with applicable instructions; except that: a building for which a permit was legally granted prior to the effective date of the KBC may be constructed and occupied under the provisions of relevant regulations in force at the time the permit was issued provided that substantial construction has commenced within one (1) year from the date the permit was issued.

(2) A building or structure hereafter enlarged, extended or altered to change from one (1) use group to another or to a different use within the same use group, in whole or part, and a building or structure hereafter altered for which a certificate of use and occupancy has not been heretofore issued, shall not be occupied or used until the certificate shall have been issued by the building official, certifying that the work has been completed in accordance with the provisions of the approved permit; except that any use or occupancy, which was not discontinued during the work alteration, shall be discontinued within thirty (30) days after the completion of the alteration unless the required certificate is secured from the building official.

(3) After a change of use has been made in a building or structure, the reestablishment of a prior use that would not have been legal in a new building of the same type of construction is prohibited unless the building complies with all applicable provisions of this code. A change from one (1) prohibited use, for which a permit has been granted to another prohibited use shall be deemed a violation of this code.

(4) Upon the request of the holder of a permit, the building official may issue a temporary certificate of occupancy for a building or structure, or part thereof, before the entire work covered by the permit shall have been completed, provided such portion or

portions may be occupied safely prior to full completion of the building or structure without endangering life or public welfare.

(5) When a building or structure is entitled thereto, the building official shall issue a certificate of use and occupancy within ten (10) days after written application. The certificate shall certify compliance with the provisions of this code and the purpose for which the building may be used in its several parts. The certificate of use and occupancy may specify the following information from the 1987 edition of the BOCA National Building Code: the use group, in accordance with the provisions of Article 3; the fire grading as defined in Article 3 and Table 902; the maximum live load on all floors as prescribed in Article 11; the occupancy load in the building and all parts thereof as defined in Article 3 and Article 8; and any special stipulations and conditions of the building permit.

Section 18. Posting Structures. (1) Every building and structure and part thereof designed for business, factory and industrial, high hazard, mercantile, or storage use (use groups B, F, H, M, and S) as defined by the KBC shall be posted on all floors by the owner with a suitably designed placard in a form designated by the department, which shall be securely fastened to the structure in a readily visible place, stating: the use group, and the occupancy load.

(2) Every room constituting a place of assembly shall have the occupancy load of the room posted in a conspicuous place, near the main exit from the room. Approved signs shall be maintained in a legible manner by the owner or his authorized agent. Signs shall be durable and shall indicate the number of occupants permitted for each room use.

(3) All posting signs shall be furnished by the owner and shall be of permanent design; they shall not be removed, or defaced and, if lost, removed or defaced, shall be immediately replaced.

Section 19. Violations and Remedies. (1) It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, remove, use or occupy any building or structure or equipment regulated by the KBC, or cause same to be done, contrary to or in conflict with or in violation of any of the provisions of this code.

(2) The building official shall serve a notice of violation or order on the person responsible for erection, construction, alteration, extension, repair, removal, demolition, use or occupancy of a building or structure in violation of this code or in violation of a detail statement or a plan approval thereunder, or in violation of a permit or certificate issued under the provisions of this code; and such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

(3) If the notice of violation is not complied with promptly, the building official shall request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation or to require the removal or termination of the unlawful use of the building or of the order or direction made pursuant

thereto.

(4) Penalties. Any person who shall violate a provision of the KBC or shall fail to comply with any of the requirements thereof or who shall erect, construct, alter or repair a building or structure in violation of an approved plan or proper direction of the building official, or of a permit or certificate issued under the provisions of the KBC, shall be subject to such penalties as may be provided by KRS 198B.990 and other applicable law.

(5) Injunctive relief. The department or any local agency enforcing the uniform state building code may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy or construction of any building on which construction was begun after the effective date of said code, upon an affidavit of the department or the local government agency specifying the manner in which the construction, or if a building existing prior to the effective date of said code, the reconstruction, alteration, repair or conversion does not conform to the requirements of the KBC.

(6) No person shall hinder an inspector enforcing any of the provisions of this code in the performance of his lawful duties under this chapter.

Section 20. Notice to Owner. (1) Upon notice from the building official that work on any building or structure is being prosecuted contrary to the provisions of this code or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop-work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work may be resumed.

(2) Unlawful continuance. Any person who shall continue any work in or about the structure after having been served with a stop-work order, except such work as he is directed to perform to remove a violation or unsafe conditions, shall be liable to the restraints provided in Section 19 of this regulation.

Section 21. Authority for Existing Buildings. (1) Upon the issuance of a final approval of a facility and the issuance of a lawful certificate of occupancy with respect to a particular facility, the building official's authority and responsibility as to that facility is ended so far as the KBC is concerned, unless the facility later becomes subjected to the KBC by virtue of Section 6 of this regulation.

(2) Other local or state law must be consulted to determine the existence of other powers given to the building official, such as those related to demolition or authority over unsafe structures, which are not specifically awarded him or her in the KBC.

(3) The State Fire Marshal's Office and the local fire official designated by the local government shall continue to be the persons responsible for enforcement of the fire safety standards for existing buildings and shall also inspect for fire safety maintenance after a building has been given a final certificate by the building official, under KRS Chapter 227, and 815 KAR 10:020.

Section 22. Local Board of Appeals. Local appeals boards may be appointed to hear the

decisions of the local building official in accordance with the provisions of KRS 198B.070.

[(1) The mayor, chairman of the board of trustees, or county judge executive of a local government which is enforcing the Kentucky Building Code, may, upon approval of the local legislative body, appoint a local appeals board, consisting of at least five (5) technically qualified persons with professional experience related to the building industry, three (3) of which must not be employees of the local government, to hear appeals of the decisions of the local building official.]

[(2) Local governments which are enforcing the Kentucky Building Code may cooperate with each other and provide a local appeals board and shall adhere to the provision of KRS Chapter 65 when entering into such cooperative agreements.]

[(3) No local building official or employee of a local inspection department may sit on a local appeals board if such board is hearing an appeal to a decision rendered by his department. No member of a local appeals board shall hear an appeal in a case in which he has financial interest.]

[(4) Any party to a decision by the local building official may appeal that decision to the local appeals board. Upon receipt of an appeal from a qualified party, the local appeals board shall convene a hearing to consider the appeal within fifteen (15) days of receipt.]

[(5) All parties to the appeal shall be notified of the time and place of the hearing by letter mailed by certified mail no later than ten (10) days prior to the date of the hearing.]

[(6) The local appeals board shall render a decision within five (5) working days after the hearing. The board may uphold, amend or reverse the decision of a local building official, and there shall be no appeal from the decision of the local appeals board other than by appeal to the board.]

Section 23. Appeals Procedures. (1) All appeals to the decisions of building officials shall be conducted in accordance with the appeals provisions of KRS 198B.070. [Where a local appeals board exists, a party including the local fire official must first appeal to the local board when aggrieved by a decision of the local building official.]

(2) [A party, including] The local fire official shall be considered a party entitled to the appeals procedures described in KRS 198B.070. [, aggrieved by a decision of a local building official where no local appeals board exists may appeal directly to the board. The board shall further hear appeals directly from a party aggrieved by the decision of an agent of the department or the State Fire Marshal.]

[(3) Application for appeal may be made when it is claimed in writing that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction can be used, or that the building official has refused to grant a modification to the provisions of this code covering the manner of construction of materials to be used in the erection, alteration or repair of a building or structure.]

[(4) The board may appoint five (5) or more of its members, excluding the chairman of the board, to consider the recommendations of the

commissioner or to conduct hearings, and those appointed shall act in all matters concerning the appeal for the entire board.]

[(5) The board may adopt such rules, regulations and bylaws as are necessary to conduct said appeals; and no member of the board or committee may vote on any matter which will result in his direct or indirect financial gain.]

[(3) [(6)] Appeals to the board shall be in writing and shall be addressed to the Commissioner of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601; Attention: Appeals Board. Such appeals shall include citations of those provisions of the Kentucky Building Code which are at issue, an explanation as stated in subsection (3) of this section of why the decision of the state building official or local building official relative to those provisions is being contested and a copy of the decision rendered by the local appeals board, if any.]

[(7) The commissioner shall immediately notify the board when an appeal is received. The commissioner or a designated employee of the department shall then investigate the evidence pertaining to such an appeal, based upon the results of such investigation, make recommendations to the board or committee on the disposition of the case in question.]

[(8) No employee of the department shall investigate or make recommendation on an appeal to his own decision, but shall defer in such cases to employees who are not party to the decision which lead to the appeals.]

[(9) In conducting such investigation, the commissioner or the designated representatives, acting for the department shall have the authority to administer oaths and affirmations, issue subpoenas authorized by law, rule upon offers of proof and receive relevant evidence, take or cause disposition to be taken, regulate the course of any hearings they may schedule, and hold conferences for the settlement or simplification of the issue by consent of the parties.]

[(10) The commissioner shall cause such investigation to be completed and forwarded with written recommendations to the board within thirty (30) days after receiving such an appeal.]

[Section 24. Action of the Board. (1) Upon receiving the written recommendations of the commissioner, the board may decide to accept such recommendations, or it may decide to convene a hearing to consider the question further. Upon receipt of the recommendations of the commissioner, the board shall render a decision on each appeal at its regularly scheduled meeting but no later than thirty (30) days after receipt of such recommendations.]

[(2) If the board has authorized an appeals committee to hear an appeal, the committee shall act for the board in all matters related to the appeal.]

[(3) Should the board's decision be to schedule a hearing on the appeal, such hearing shall occur within thirty (30) days of such decision, and all parties to such hearing shall be immediately notified in writing of the time and place of such hearing by the commissioner. The board may further exercise the same powers of investigation as granted to the commissioner in Section 23 of this regulation. The board shall render a decision within ten (10) days of any appeals hearing it may conduct.]

[(4) The board may uphold, amend or reverse the decision of a local appeals board, a local building official or the state building official; and the decision of the board or the appeals committee shall be final.]

[(5) The chairman of the board shall notify the appropriate building official and he or she shall take immediate action in accordance with the decision of the board.]

[(6) There shall be no appeal from the board's decision except to the circuit court within whose jurisdiction the property in question is located. Application for review shall be made to the proper court within thirty (30) days following that decision.]

Section 24. [25.] Construction Control and Responsibilities. (1) The provisions of this section shall define the responsibility of the building official in relation to design professionals and the circumstances under which the department or the local building official shall be authorized to accept design professionals affirmation in their plans and specifications as to compliance with various provisions of this code.

(2) All new, alteration, repair, expansion, addition or modification work involving the practice of professional architecture and engineering as defined by KRS Chapters 322 and 323 shall be prepared by registered professional architects or engineers as certified by the state; and all plans, computations and specifications required for a building permit application for such work must be prepared by or under the direct supervision of the registered architect or engineer and bear his seal and signature in accordance with those statutes.

Section 25. [26.] Validity. (1) In the event any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions thereof, which may or shall be determined to be legal; and it shall be presumed that this code would have been passed without such illegal or invalid parts or provisions.

(2) Any invalid part of this code shall be segregated from the remainder of this code by the court holding such part invalid, and the remainder shall remain effective.

(3) The invalidity of any provision in any section of the KBC as applied to existing buildings and structures shall not be held to affect the validity of such section in its application to buildings and structures hereafter erected.

Section 26. [27.] Effective Dates for KBC Application. (1) Any building required by Section 9(1) of this regulation to be submitted to the Department of Housing, Buildings and Construction and which was not submitted and accepted for construction prior to February 15, 1980, must be constructed in compliance with the applicable provisions of the KBC.

(2) Any building required by Section 8 of this regulation to be submitted to a local government for plan review and which was not lawfully approved for construction prior to the following timetables shall be constructed in compliance with the applicable provisions of the KBC:

(a) In all local governments in a county containing a first or second class city or urban

county government, no later than February 15, 1980.

(b) In all local governments in a county where the largest city is of the third or fourth class, no later than August 15, 1981.

(c) In all local governments in a county containing no city larger than fifth or sixth class, no later than August 15, 1982.

(3) Any local government may adopt the KBC voluntarily before the mandatory date stated in subsection (2) of this section.

Section 27. [28.] Whenever the department has entered into a contractual obligation requiring enforcement of applicable federally approved codes, the department shall approve plans and make inspections; using those federal codes as an alternative to other applicable provisions of the KBC, so long as equivalent safety is maintained. Any facility of an occupancy type subject to review by the federal codes may use this section.

Section 28. [29.] Day Care Centers. Family child day care homes, group day care homes, day nurseries and child day care centers which comply with the provisions of the Life Safety Code, N.F.P.A. Pamphlet #101, shall be deemed to have satisfied all the life safety requirements of the Kentucky Building Code.

Section 29. [30.] Until December 31, 1987, the department shall accept plans in conformity with the requirements of either the 1984 Edition BOCA Code or the 1987 Edition, together with any Kentucky amendments thereto. After December 31, 1987, all plans shall be designed to conform with the 1987 Edition of the BOCA Code as set forth in this regulation.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: October 6, 1989

FILED WITH LRC: October 11, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on November 21, 1989 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by November 16, 1989, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

*Because these amendments are made at the request of the Interim Committee on Cities and there are no substantive changes, the answer to the questions below is "none".

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

PUBLIC PROTECTION & REGULATION CABINET Department of Housing, Buildings & Construction Division of Building Codes Enforcement (Proposed Amendment)

815 KAR 7:020. Building code.

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is required by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code, which establishes standards for construction of buildings in the state. This regulation establishes the Kentucky Building Code basic provisions relating to new construction, including general building limitations, special use and occupancy, light, ventilation and sound transmission control, means of egress, structural and foundation loads and stresses, acceptable materials and tests, fire resistive construction and fire protection systems, safety during building operations, mechanical systems, energy conservation and electrical systems. This amendment clarifies the intent of statewide uniformity in enforcement of ventilation requirements for basements which are not designed or intended to be used as living spaces, e.g., utility rooms, storage, and updates the electrical standards by listing the newest edition of the National Electrical Code. [This amendment is necessary to update to the newest technology by citing the latest edition in reference materials for elevators and to recognize acceptability of specially designed wheelchair lifts.]

Section 1. Definitions. As used in this regulation unless otherwise provided, the following definitions shall be used:

(1) "Basement": As defined by KRS 198B.010(3).

(2) "Building": As defined by KRS 198B.010(4).

(3) "Construction": As defined by KRS

198B.010(12).

(4) "Equipment": As defined by KRS 198B.010(15).

(5) "Reconstruction: The process of reproducing by new construction the exact form and detail of a vanished building, structure or object or part thereof as it appeared at a specific period of time."

(6) "Rehabilitation: The process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use of while preserving those portions or features of the property which are significant to historical, architectural and cultural values."

(7) "Restoration: The process of accurately recovering the form and details of the property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work."

(8) "Stabilization: The process of applying measures designed to reestablish a weather-resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists."

(9) "Story": As defined by KRS 198B.010(22).

[(10) "TIA or Tentative Interim Amendment: means a publication of the National Fire Protection Association Standards Council which is a tentative amendment of the National Electrical Code referenced in Section 2 of this regulation because it has not been processed through the entire standards-making process; and it is interim because it shall be effective only between editions of the standard. As used in this regulation, it shall be a permanent provision until otherwise amended."]

Section 2. The Kentucky Building Code shall include the National Electrical Code, 1990 [1987] Edition, N.F.P.A. #70, which is hereby adopted by reference, published by and copies available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269. [The National Electrical Code is hereby adopted by reference.] Copies are also available to be inspected at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

Section 3. The Kentucky Building Code shall include the "BOCA National Building Code/1987," Tenth Edition, published by and copies available from Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477. Copies of the Kentucky Building Code are also available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, Monday through Friday between 8 a.m. and 4:30 p.m. That code, including all standards listed in Appendices A through D is hereby adopted by reference on June 18, 1987, with the additions, exceptions and deletions set forth in this regulation, including the following amendments:

(1) Delete Article 1 in its entirety. All requirements for the administration and enforcement of this regulation are set forth in 815 KAR 7:010 with fees established by 815 KAR 7:013.

(2) Amend subsection 309.5 to read as follows:

"309.5 Use group R-4 Structures: This use group shall include all detached one (1) or two (2) family dwellings not more than three (3) stories in height, and their accessory structures as indicated in the Appendix B Standard, One (1) and Two (2) family Dwelling Code. All such structures shall be designed and built in accordance with the requirements of this code for use group R-3 structures or shall be designed and built in accordance with all the requirements of the one (1) and two (2) family dwelling code as listed in Appendix B, except that the requirements of the state plumbing code (Article 28) shall supersede those conflicting requirements of the one (1) and two (2) family dwelling code. This choice shall be made by the builder at the time of plans submission. Nevertheless, any builder may use exception #3 of Section 809.4 to determine minimum size of egress windows."

(3) Amend subsection 505.1 to read as follows: "505.1 Alteration Limitations: These provisions shall not be deemed to prohibit alterations within the limitations of Sections 106 and 505.2 provided an unlawful change of use is not involved."

(4) Delete Sections 512.1 through 512.4.1 and insert in lieu thereof the following: "512.1" Requirements for accessibility of the handicapped: Please see 815 KAR 7:060 for construction requirements providing accessibility to the handicapped, Article 33 of this Code.

(5) Amend Article 32 as follows:

(a) Amend Section 3202.1 to read as follows: "The provisions in the following Section 3202.1.1 through 3202.1.5 shall apply to existing buildings that will continue to be, or are proposed to be, in Use Groups A, B, E, F, M, R and S. These provisions shall not apply to historic buildings as provided for in Section 102.5."

(b) Amend subsection 3202.1.5 to read as follows: "All portions of the buildings proposed for change in use shall conform to the provisions of Article 33 as required by Section 3302.1."

(6) Amend Section 600.8.2 by creating a new subsection to read as follows: "600.8.2 Housekeeping: Periodic inspections of existing uses and occupancies shall be made by the appropriate fire and health officials to insure maintenance of good housekeeping conditions."

(7) Amend Section 608.1 to read as follows: "Private garages located beneath rooms in buildings of Use Groups R-1, R-2, R-3 or I-1 shall have walls, partitions, floors and ceilings separating the garage space from the adjacent interior spaces constructed of not less than one (1) hour fire-resistance rating. Attached private garages shall be completely separated from the adjacent interior spaces and the attic area by means of one-half (1/2) inch gypsum board or equivalent applied to the garage side. The sills of all door openings between the garage and adjacent interior spaces shall be raised not less than four (4) inches (102 mm) above the garage floor. The door opening protectives shall be one and three-fourths (1 3/4) inch solid core wood doors or approved equivalent. In lieu of the required one and three quarter (1 3/4) or twenty (20) minute door, an approved automatic sprinkler head located directly above the door in the garage and properly connected to the domestic water

system or an approved automatic detector located directly above the door in the garage shall be acceptable."

(8) Delete Section 702 and Section 804 in their entirety.

(9) Amend Article 11 as follows:

(a) Amend Section 1100.0 by creating a new subsection to read as follows: "1100.2 Certificate of Compliance: the provisions of this article and Article 12 may be deemed to have been satisfied when certification of an architect or engineer registered in Kentucky to that effect is placed on drawings submitted to the building official."

(b) Amend subsection 1105.4 by changing "Section 103.3" to "Section 106.3".

(c) Amend subsection 1113.1.1, Additions, by adding an exception to read as follows: "Exception: in Zone 1, additions that increase the height of an existing building shall not be required to conform to the provisions of this subsection."

(10) Delete subsections 904.4.2, 904.4.3, 904.4.4 in their entirety; and amend subsection 904.4 to read as follows: "Interior hangings and decorations shall comply with Section 904.4.1."

(11) Amend subsection 2500.2 to read as follows: "2500.2 Boilers: All boilers and associated pressure piping shall meet the standards for construction, installation and inspection as set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(12) Add two (2) new subsections to Section 2500.0 to read as follows:

(a) "2500.3 Unfired Pressure Vessels. All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1983 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, American National Standards Institute, Inc./American Society of Mechanical Engineers (ANSI/ASME) BPV-VIII-1."

(b) "2500.4 Mechanical Code: All mechanical equipment and systems not covered by 2500.2 or 2500.3 but which are required by other provisions of this code to be installed in accordance with the mechanical code listed in Appendix A, shall be constructed, installed and maintained in conformity with the BOCA Basic Mechanical Code/1987 including all applicable standards listed within Appendix A."

(13) Delete Article 29 in its entirety.

(14) Amend Article 27 by changing, creating or deleting certain portions thereof, as follows:

(a) Create a new subsection 2700.5 to read as follows: "2700.5 Electrical Inspections: Inspections conducted to determine compliance with the National Electrical Code shall be conducted by a certified electrical inspector in accordance with 815 KAR 35:015."

[(b) Create a new subsection to 2700.5 to read as follows: "2700.5.1 Tentative Interim Amendment. Notwithstanding the provisions of Section 310-15(b) of the National Electrical Code dealing with ampacities of underground conductors, compliance with Tentative Interim Amendment #87-4, dated April 6, 1988, is incorporated by reference and shall be deemed to satisfy the intent of the Code. Copies of which are available from the Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, KY 40601."]

[(b) [(c)] Delete Subsections 2701.3, 2704.3, and 2704.4.

[(c) [(d)] In Subsections 2702.1, 2702.3 and

2703.1 delete the words "Building Official" and insert in lieu thereof the word "Certified Electrical Inspector."

(15) Delete subsections 2800.1 through 2807.1 in their entirety and insert in lieu thereof the following: "2800.1 Scope: The design and installation of all plumbing systems, including sanitary and storm water sewage disposal in buildings shall comply with the requirements of Chapter 318 of the Kentucky Revised Statutes and the Kentucky State Plumbing Code as set out in Title 815, Chapter 20, Kentucky Administrative Regulations."

(16) Amend subsection 809.4 to read as follows: "809.4 Emergency escape: Every sleeping room below the fourth story in buildings of Use Group R and I-1 shall have at least one (1) operable window or exterior door approved for emergency egress or rescue. The units shall be operable from the inside to a full clear opening without the use of separate tools. Where windows are provided as a means of egress or rescue, they shall have a sill height not more than forty-four (44) inches (1118 mm) above the floor. All egress or rescue windows from sleeping rooms shall have a minimum net clear opening of five and seven-tenths (5.7) square feet (0.532). The minimum net clear opening height dimension shall be twenty-four (24) inches (610 mm). The minimum net clear opening width dimension shall be twenty (20) inches (508 mm)."

Bars, grilles or screens placed over emergency escape windows shall be releasable or removable from the inside without the use of a key, tool or excessive force."

EXCEPTIONS

1. Grade floor windows may have a minimum net clear opening of five (5) square feet (0.47 m²).

2. In buildings where the sleeping room is provided with a door to a corridor having access to two (2) remote exits in opposite directions, an outside window or an exterior door for emergency escape from such sleeping room shall not be required.

3. Buildings equipped throughout with a complete automatic fire suppression system.

4. Egress windows located on the first and second stories in multiple family dwellings (R-2 and R-3 use groups) and one (1) and two (2) family dwellings, may have a minimum net clear opening height dimension of twenty-two (22) inches and a minimum width dimension of twenty (20) inches; and the net clear opening area may be reduced to no less than four (4) square feet. The minimum total glazed area shall be five (5) square feet in the case of a ground floor window and not less than five and seven-tenths (5.7) square feet in the case of a second story window. (This exception applies only if the sash frames can be readily broken or removed.)

Section 4. Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance. The following subsections of Article 26 of the BOCA National Building Code, 1987 Edition are deleted or amended to read as follows:

(1) Amend Subsection 2603.4 of Article 26 to read as follows: "2603.4 Posting certificates of compliance: The owner or lessee shall post the last issued certificate of compliance in a conspicuous place on the elevator, available to the building official."

(2) Amend Subsection 2602.4.1 of Article 26 to

read as follows: "2602.4.1 Periodic Inspection Intervals: Periodic inspections shall be made at intervals of not more than twelve (12) months for all passenger elevators, manlifts and escalators."

(3) Amend Subsection 2610.1 of Article 26 to read as follows: "2610.1 General: The construction of machine rooms and related construction for passenger and freight elevators and dumbwaiters shall be protected from the weather, and shall be enclosed with fire resistive enclosures. Enclosures and access doors thereto shall have a fire endurance at least equal to that required for the hoistway enclosure in Table 401."

(4) Create a new Section 2618.0, Wheelchair and Stairway Lifts, in Article 26 to read as follows: "2618.1 General. Except as herein provided, inclined stairway chairlifts and inclined and vertical wheelchair lifts shall conform to the requirements of ASME A17.1 listed in Appendix A. Exception: Vertical wheelchair lifts are permitted to have a travel distance not to exceed 23 feet and penetrate a floor subject to the following additional requirements."

1. The platform shall be fully enclosed on the top and any side which is not used as an exit or entrance. Enclosures shall conform to the requirements of ASME A17.1 listed in Appendix A.

2. The runway shall be fully enclosed from the floor to the ceiling on all floors conforming with the requirements of Section 2608.0.

3. All runway entrances shall be protected by a door of unperforated construction conforming to the requirements of Section 2611.0.

4. All runway entrance doors shall be equipped with approved interlocks conforming to the requirements of ASME A17.1 listed in Appendix A."

Section 5. Elevators. On page 485 of Appendix A of the BOCA National Building Code under "Elevators, Escalators and Moving Walks," delete the reference to A17.1-84 and the 1985 supplement and insert in its place "A17.1-1987 with the exception of rules 102.2(c)(4) and 700.4b, 700.5, 700.7b, 700.10b, 707.4."

Section 6. Amend Article 3 of the 1987 Edition of the BOCA National Building Code adding a new section to read as follows: "310.4 Tobacco auction warehouses: Warehouses, for the sale of tobacco only, of Type 1, Type 2, or Type 3 construction, may be constructed without a sprinkler system when all the following requirements have been met:

(1) The initial submission of plans to the Department of Housing, Buildings and Construction shall include a signed certificate by the owner that the warehouse shall be used solely for the sale of tobacco on a seasonal basis or for the storage of noncombustibles.

(2) A manual fire alarm and smoke detection system with notification to the local fire service shall be provided with installation in accordance with Section 1017 of this code.

(3) An eighteen (18) foot paved and posted fire lane surrounding the entire perimeter of the building shall be provided and be accessible from a public street.

(4) A fifty (50) foot fire separation shall be maintained between the warehouse and the lot line and the warehouse and the nearest building."

Section 7. Amend the 1987 Edition of the BOCA National Building Code as follows:

(1) Amend Article 5 as follows:

(a) In subsection 505.1, change the number, "103.0," to read "106.0."

(b) In subsection 511.1, change the number, "124.0," to read "123.0."

(c) Delete subsection 513.1 in its entirety.

(2) Delete the reference to the BOCA Fire Prevention Code listed in Appendix A and insert in lieu thereof the following: "The Kentucky Fire Safety Standards (815 KAR 10:020 - Fire Safety Standards) shall be used as the fire prevention code."

(3) Amend Figure 1113.1 of Article 11 by adding the following list of 120 Kentucky counties showing the assigned earthquake risk zone for each. The risk zone assigned herein shall supersede any general area designations as shown upon the face of the map.

Earthquake Risk Zone #1

Adair	Elliott	Laurel	Oldham
Allen	Estill	Lawrence	Owen
Anderson	Fayette	Lee	Owsley
Barren	Fleming	Leslie	Pendleton
Bath	Floyd	Letcher	Perry
Bell	Franklin	Lewis	Pike
Boone	Gallatin	Lincoln	Powell
Bourbon	Garrard	Logan	Pulaski
Boyd	Grant	Madison	Robertson
Boyle	Grayson	Magoffin	Rockcastle
Bracken	Greene	Marion	Rowan
Breathitt	Greenup	Martin	Russell
Breckinridge	Hancock	Mason	Scott
Bullitt	Hardin	Meade	Shelby
Butler	Harlan	Menifee	Simpson
Campbell	Harrison	Mercer	Spencer
Carroll	Hart	Metcalfe	Taylor
Carter	Henry	Monroe	Todd
Casey	Jackson	Montgomery	Trimble
Christian	Jefferson	Morgan	Warren
Clark	Jessamine	Muhlenberg	Washington
Clay	Johnson	McCreary	Wayne
Clinton	Kenton	McLean	Whitley
Cumberland	Knott	Nelson	Wolfe
Daviess	Knox	Nicholas	Woodford
Edmonson	Larue	Ohio	

Earthquake Risk

Zone #2

Caldwell
Calloway
Crittenden
Henderson
Hopkins
Lyon
Trigg
Union
Webster

Earthquake Risk

Zone #3

Ballard
Carlisle
Fulton
Graves
Hickman
Livingston
Marshall
McCracken

(4) Amend subsection 2203.2.1.7 to read as follows: "Glazing in fixed panels having a glazed area in excess of nine (9) square feet (0.84 m²) with the lowest edge less than eighteen (18) inches (457 mm) above the finish floor level or walking surface within thirty-six (36) inches (914 mm) of such glazing, and the finish floor or walking surface are extended on both sides of said glazing. In lieu of safety glazing, such glazed panels may be protected with a horizontal member not less than one and one-half (1 1/2) inches (38 mm) in width when located between twenty-four (24) inches (610 mm) and thirty-six (36) inches (914 mm) above the walking surface."

(5) Amend section 2203 by adding a new

subsection 2203.3 which shall read as follows:

(a) "2203.3 Labeling requirements:

1. Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in such a location within the Commonwealth of Kentucky shall be permanently labeled by such means as etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of American National Standards Institute, Inc. (ANSI) Standard Z-97.1 and Z-97.1a listed in Appendix A and such further requirements as may be adopted by the Department of Housing, Buildings and Construction. The label shall be legible and visible after installation. Safety glazing labeling shall not be used on materials other than safety glazing materials."

(6) Amend subsection 915.4 and the exceptions thereto to read as follows: "915.4 Duct and pipe shafts: In all buildings other than buildings of Use Group R-2, vertical pipes arranged in groups of two (2) or more which penetrate two (2) or more floors and occupy an area of more than one (1) square foot (0.093 m²), and vertical ducts which penetrate two (2) or more floors, shall be enclosed by construction of not less than one (1) hour fire-resistance rating to comply with this section. All combustible ducts connecting two (2) or more stories shall be enclosed as indicated herein.

Exceptions:

1. In all buildings of Use Group R-2, vertical noncombustible ducts shall not be required to have a one (1) hour enclosure provided:

(a) the cross sectional area does not exceed thirty-five (35) square inches;

(b) the duct does not penetrate more than three (3) floors;

(c) the duct serves no more than one (1) dwelling unit and shall not join other ducts except above the top level for the purpose of utilizing a single roof penetration; and

(d) these ducts are restricted for use as a bathroom or kitchen exhaust, and combustion air supply and relief.

(7) Add the following language and National Fire Protection Association (NFPA) Standards to Appendix A on page 496:

"These National Fire Protection Association (NFPA) Standards shall be used for fire suppression requirements and design only, where referenced in a specific code requirement in the body of the Code."

BOCA Guide for Suppression Requirements for Specific Occupations

Installation of Sprinkler Systems NFPA 13-87
Standard for Installation for

Private Fire Service Mains and their Appurtenances	NFPA 24-1984
Aircraft Hangars	NFPA 409
Pyroxylin Plastics	NFPA 40C
Flammable Liquids	NFPA 36
Laboratories	NFPA 45
Fireworks	NFPA 44A
Gaseous Oxidizing Materials	NFPA 43C
L.P. Gas Storage	NFPA 58
Local Protective Signaling Systems	NFPA 72A-87

High Piled Storage in Excess of

12 ft. in height	NFPA 231
Rubber Tire Storage	NFPA 231D
Baled Cotton Storage	NFPA 231E
Rolled Paper Storage	NFPA 231F
Ranghoods	NFPA 96
Computer Rooms	NFPA 75
Archives and Record Centers	NFPA 232AM
L.P. Gas Storage and Handling	NFPA 59A
Explosion Prevention Systems	NFPA 69
Fur Storage	NFPA 81
Cooling Towers	NFPA 214
Marinas and Boatyards	NFPA 303
Library Stacks	NFPA 910

(8) Amend Article 30 as follows:

In subsection 3005.2, delete the words, "Section 2805.4 through 2805.4.3" and insert in lieu thereof "Article 28, 815 KAR 20:090."

(9) Delete Article 28 in its entirety and insert in lieu thereof the following reference: "2800.1 General: See Kentucky State Plumbing Code for all the requirements for plumbing installations as set forth in Chapter 20, Title 815 of Kentucky Administrative Regulations. Informational copies are available from the Kentucky Division of Plumbing, U.S. 127 South, Frankfort, Kentucky 40601."

Section 8. Amend section 812 of the 1987 Edition of the BOCA National Building Code.

(1) Amend the first sentence of subsection 812.4.2 to read as follows: All doors equipped with latching or locking devices in buildings of Use Groups A and E or portions of buildings used for assembly or educational purposes and serving rooms or spaces with an occupant load greater than 100 shall be equipped with approved panic hardware."

(2) Create an exception to subsection 812.4.2 to read as follows: "Exception: Panic hardware for Use Group A3 shall not be required for principal entrance/exit doors if (1) they are free-swinging; and (2) the calculated occupant load does not exceed 150; and (3) the latch/lock device is a thumb latch/lock or a key operated lock device in which the key cannot be removed from the side from which egress is to be made when it is locked."

Section 9. Amend Section 1016.1 to read as follows: "1016.1 Fire hydrants: Fire hydrants installed on private property as a part of a private fire protection system shall be located so as to meet the requirements of NFPA 24. Yard hydrant installation shall be coordinated with the responsible fire officials who shall not make recommendations which exceed the requirements of NFPA 24. Hydrants not addressed by NFPA 24 shall conform to the standards of the administrative authority of the jurisdiction and the fire department. Hydrants shall not be installed on a water main less than six (6) inches in diameter."

Section 10. Amend Article 9 of the 1987 Edition of the BOCA National Building Code by creating certain portions thereof to read as follows:

(1) Create a new subsection 905.4 to read as follows: "905.4 Combustible Pipe: Combustible Pipe shall be permitted in all use groups and construction types where approved by Article 28 of this Code and the Kentucky State Plumbing Code."

(2) Create a new subsection 905.4.1 to read as follows: "905.4.1 Vertical Combustible Pipes: Vertical Combustible Pipes shall comply with Sections 905.4.2 and 915.4."

(3) Create a new subsection 905.4.2 to read as follows: "905.4.2 Combustible Pipe Penetrations: Combustible pipe penetrations of fire-resistance rated assemblies shall be acceptable when installed in accordance with an approved tested assembly utilizing combustible pipe penetrations. If there is no approved tested assembly with combustible pipe penetrations, noncombustible fittings shall be required where combustible pipe penetrations enter into or exit from the fire-resistance rated assembly."

Section 11. Create a new Section 2511 of the 1987 BOCA National Building Code entitled "Rangehoods" to read as follows: "2511 Rangehoods. Rangehoods in kitchen exhaust systems shall comply with the requirements of the Mechanical Code listed in Appendix A. The bottom edge of the hood shall be located at a height of not more than four feet (4') above the cooking surface."

Section 12. Amend subsection 625.1 of the 1987 Edition of the BOCA National Building Code by adding a sentence to read as follows: "625.1.1 The Cabinet for Human Resources, Department for Health Services shall regulate the design and construction of new facilities as related to water distribution and treatment systems for public swimming pools and the proper operation and maintenance of all such facilities. See 902 KAR 10:120, Kentucky Public Swimming and Bathing Facilities Regulation."

Section 13. Amend Appendix A, page 492 of the 1987 BOCA National Building Code under Council of American Building Officials (CABO) by adding a reference to CABO-1987 Supplement and amend page 496 by changing the NEC reference to the 1990 Edition.

Section 14. Amend the 1987 Edition of the BOCA National Building Code, Section 1012.2.9, Use Group S, by adding an Exception to read as follows: "Use Group S: In all buildings or structures or portions thereof of Use Group S, other than public garages which shall conform to Section 1012.2.11, when:

(1) Three (3) or more stories in height, of Use Group S-1, and more than 3,000 square feet (279 m²) in area per floor; or

(2) Three (3) or more stories in height, of Use Group S-2, and more than 10,000 square feet (930 m²) in area per floor; or

(3) Four (4) or more stories in height of Use Group S-1 or S-2 regardless of the area per floor.

EXCEPTION: For open parking structures, the required standpipe may be a dry standpipe system without making a connection to the permanent water supply."

Section 15. Amend Table 806 of Article 8 of the 1987 Edition of the BOCA National Building Code by adding an Exception to Industrial Areas to read as follows: "Exception: For purposes of determining jurisdiction under Sections 108 and 109, design professional seal requirements, and Article 33 coverage, use 200 gross."

Section 16. Amend subsection 304.1 of the 1987 Edition of the BOCA National Building Code to read as follows: "304.1 General: All buildings and structures, or parts thereof, other than those used for business training or vocational training, shall be classified in Use Group E which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities. Educational type uses with a total occupant load less than fifty (50) shall be classified as Use Group B. School buildings, or parts thereof, for business training or vocational training shall be classified in the same use group as the business or vocation taught."

Section 17. Amend various sections of the 1987 BOCA National Building Code dealing with apartment buildings and single family dwellings by creating certain exceptions, as follows:

(1) Create an exception to Section 708.1.3 to read, "Exception: Use Group R-3 basement recreation rooms, a furred ceiling height of six feet and eight inches (6'8") around the ducts may be made in the soffit area only for structural beams and mechanicals. The above two-thirds (2/3) area requirements must still be met."

(2) Create an exception to Section 828.2.2 to read, "Exception: Handrails within individual dwelling units shall not be less than thirty (30) inches nor more than thirty-four (34) inches, measured vertically, above the nosing of the treads or above the finished floor."

Section 18. Amend Subsection 2102.1, General, of the 1987 Edition of the BOCA National Building Code by adding an Exception to read as follows: "Exception: Plans showing compliance with Subsection 2102.1 through 2102.10.3 shall be submitted to the Kentucky Division of Water pursuant to KRS 151.250 and 260. Approval of plans by or through that agency together with their final approval of construction shall constitute compliance with these sections."

Section 19. Amend Article 2, Section 201 of the 1987 Edition of the BOCA National Building Code by adding a notation to the definition of "building" which reads as follows: "For application of this code, each portion of a building completely separated from other portions by fire walls complying with Section 908.0 shall be considered as a separate building for the determination of height and area limitations of buildings contained in Table 501."

Section 20. Amend Subsection 709.3, Alternative mechanical ventilation, of the 1987 Edition of the BOCA National Building Code to read as follows: "Enclosed attic, rafter and crawl spaces and other uninhabited spaces such as unfinished basements, which are not ventilated as herein required, shall be equipped with a mechanical ventilation system conforming to the requirements of Section M-1605 of the mechanical code listed in Appendix A."

CHARLES A. COTTON, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: October 9, 1989

FILED WITH LRC: October 11, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on November 21, 1989 at

10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by November 16, 1989, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Contractors, architects, engineers, users of Kentucky Building Code.

(a) Direct and indirect costs or savings to those affected: No costs or savings because regulation only establishes acceptability and sets standards.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): No competition; KBC is statewide code.

(b) Reporting and paperwork requirements: None other than filing of administrative regulation.

(2) Effects on the promulgating administrative body: None to the agency because the regulation merely provides accepted standards in construction.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

(3) Assessment of anticipated effect on state and local revenues: No effect on revenue either state or local.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method of construction was rejected. Board of Housing reviews amendments and passes as acceptable, safe addition within limits defined.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known statute in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This amendment clarifies enforcement intent of ventilation requirements for areas not designed to be used as living space and updates the electrical standards to the latest edition available.

TIERING: Was tiering applied? Yes.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment will affect a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This amended regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the KBC.

4. How does this administrative regulation affect the local government or any service it provides? There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this amendment.

PUBLIC PROTECTION & REGULATION CABINET Department of Housing, Buildings & Construction Division of Building Codes Enforcement (Proposed Amendment)

815 KAR 7:060. Facilities for the physically disabled in new construction.

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.260

NECESSITY AND FUNCTION: The Board of Housing, Buildings and Construction is required by KRS 198B.260 to issue regulations establishing the requirements necessary for making buildings accessible to and usable by physically disabled persons. This regulation has been designed after and selected from various nationally recognized codes and standards. This regulation establishes the minimum new construction requirements which shall apply to buildings and facilities to provide accessibility and usability by the elimination of architectural barriers in the environment. The terms of this regulation shall be incorporated into the Kentucky Building Code. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A by placing the definitional section into Section 1 (reversing placement of Section 1 and Section 2) and amending the purpose and scope. No other substantive changes were made.

Section 1. [2.] Definitions. The following terms shall, for the purpose of this regulation, have the meaning indicated in this section.

(1) Access aisle. An accessible pedestrian space between elements such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

(2) Accessible. Describes a site, building, facility, or portion thereof that complies with this section and that can be approached, entered, and used by physically disabled people.

(3) Accessible element. Part of an accessible route or accessible functional space; an item specified by this regulation (for example, telephone, controls, and the like).

(4) Accessible route. A continuous unobstructed path connecting all accessible

elements and spaces in a building or facility that can be negotiated by a severely disabled person using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, walks, and ramps.

(5) Adaptability. The ability of certain building elements, such as kitchen counters and sinks to be added to, raised, lowered, or otherwise altered so as to accommodate the needs of either the disabled or nondisabled, or to accommodate the needs of persons with different types or degrees of disability.

(6) Assembly area. A room or space accommodating fifty (50) or more individuals for religious, recreational, educational, political, social or amusement purposes, or for the consumption of food and drink, including all connected rooms or spaces with a common means of egress and ingress. Such areas as conference rooms would have to be accessible in accordance with other parts of this standard but would not have to meet all of the criteria associated with assembly areas.

(7) Automatic door. A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch mounted on or near the door itself (see power-assisted door).

(8) Circulation path. An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

(9) Clear; unobstructed.

(10) Common use. Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, residents of an apartment building, occupants of an office building, or guests of such residents or occupants).

(11) Coverage. The extent or range of accessibility that a particular administrative authority adopts and requires.

(12) Cross slope. The slope of a pedestrian way that is perpendicular to the direction of travel (see running slope).

(13) Curb ramp. A short ramp cutting through a curb or built up to it.

(14) Detectable. Perceptible by one (1) or more of the senses.

(15) Disability. A limitation or loss of use of a physical, mental, or sensory body part or function.

(16) Dwelling unit. A single unit providing complete, independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.

(17) Egress, means of. A continuous and unobstructed path of travel from any point in a building or structure to a public way and consists of three (3) separate and distinct parts:

- (a) The exitway access;
- (b) The exitway; and
- (c) The exitway discharge; a means of egress comprises the vertical and horizontal means of

travel and shall include intervening room spaces, doors, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, escalators, horizontal exits, courts, and yards.

(18) Emergency. Refers to facilities resulting from or anticipating unforeseen combinations of circumstances, for example, storm shelters, bomb shelters, and comparable refuges.

(19) Functional spaces. The rooms and spaces in a building or facility that house the major activities for which the building or facility is intended.

(20) Handicapped. Those with significant limitations in using specific parts of the environment.

(21) Housing. A building, facility, or portion thereof, excluding inpatient health care facilities, that contains one (1) or more dwelling units or sleeping accommodations. Housing may include, but is not limited to, one (1) and two (2) family dwellings, apartments, group homes, hotels, motels, dormitories, and mobile homes.

(22) Marked crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

(23) Operable part. A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, push-button, handle).

(24) Power-assisted door. A door with a mechanism that helps to open the door, or relieve the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself. If the switch or door is released, such doors immediately begin to close or close completely within three (3) to thirty (30) seconds (see automatic door).

(25) Principal entrance. An entrance intended to be used by the residents or users to enter or leave a building or facility. This may include, but is not limited to, the main entrance.

(26) Public use. Describes interior and exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

(27) Ramp. A walking surface that has a running slope greater than 1:20.

(28) Reasonable number. A number that is sufficient to accommodate the disabled users of a site, building, facility, or element.

(29) Running slope. The slope of a pedestrian way that is parallel to the direction of travel (see cross slope).

(30) Service entrance. An entrance intended primarily for delivery or service.

(31) Signage. Verbal, symbolic, and pictorial information.

(32) Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

(33) Site improvements. Landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

(34) Sleeping accommodations. Rooms in which people sleep, for example, dormitory and hotel or motel guest rooms, but not including dwelling units.

(35) Tactile. Describes an object that can be perceived using the sense of touch.

(36) Tactile warning. A standardized surface texture applied to or built into walking

surfaces or other elements to warn visually impaired people of hazards in the path of travel.

(37) Temporary. Applies to facilities that are not of permanent construction but are extensively used or essential for public use for a given (short) period of time; for example, temporary classrooms or classroom buildings at schools and colleges, or facilities around a major construction site to make passage accessible, usable, and safe for everybody. Structures directly associated with the actual processes of major construction, such as port-a-potties, scaffolding, bridging, trailers, and the like, are not included.

(38) Vehicular way. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

(39) Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

(40) Walking aid. A device used by a person who has difficulty walking (for example, a cane, crutch, walker, or brace).

Section 2. [1.] Purpose and Scope. It is the express intention of this regulation to achieve uniformity in the technical design criteria necessary to establish a barrier-free environment thereby allowing a physically disabled person to get to, enter and use a building or facility, so that they may have access to education, employment, living and recreational opportunities and be as self sufficient as possible.

(1) New construction. This regulation shall be mandatory to and in all new buildings and facilities defined by KRS 198B.260, including both rooms and spaces, site improvements, exterior facilities and public walks, [as follows:]

[(a) Storage, miscellaneous and temporary occupancies in which the total occupant load is in excess of 100 persons or 20,000 square feet or three (3) stories.]

[(b) Factory and industrial occupancies in which the total occupant load is in excess of 100 persons or 20,000 square feet.]

[(c) Business occupancies in which the total occupant load is in excess of 100 persons or 10,000 square feet.]

[(d) Mercantile occupancies in which the total occupant load is in excess of 100 persons, 3,000 square feet of consumer area or 10,000 square feet of total floor area.]

[(e) Churches, parochial and private schools and other similar nonpublic assembly type occupancies in which the total occupant load is in excess of 250 persons or 3,200 square feet.]

[(f) Assembly occupancies (other than those in subsection (e) of this section) in which the total occupant load is in excess of fifty (50) persons or 1,500 square feet total area.]

[(g) Residential occupancies, with the exception of single family dwellings, duplexes and multifamily housing projects of less than twenty-five (25) units. The common areas of condominiums are required to be accessible, but not the interior of the condominium units.]

[(h) Institutional occupancies, with the exception of child day care facilities providing care for less than thirteen (13) children.]

[(i) All buildings and facilities which are leased or owned by the state, county, city or other municipal corporation, regardless of type

of use, occupant load or total square footage. Only new leases will be treated as new facilities.]

[(j) Any establishment which is physically located within any building or facility otherwise covered by this section or within the premises of which is physically located any such covered establishment; and which also holds itself out as serving patrons of such covered establishment.]

[(k) All gasoline service stations, regardless of size or occupant capacity.]

[(l) Any building of an occupant load, occupancy type or size not listed in this section shall be exempted from the requirements of this regulation as a "small business concern."]

(2) Existing buildings. This regulation shall be mandatory for existing buildings, as follows:

(a) Alterations and repairs may be made to any structure without requiring other areas of the existing structure to comply with the accessibility requirement of this regulation provided such new work conforms to that of a new structure.

(b) Additions to an existing facility shall comply with the standards established by this regulation; however, the existing portion need not comply provided such addition does not result in decreased accessibility.

(c) Remodeling involving major structural changes to a building shall require full compliance with all applicable provisions of this regulation.

(d) The restoration or authentic reconstruction of buildings designated as historic properties by the Kentucky Heritage Commission or the National Register of Historic Places are exempt from the requirements of this regulation.

(3) Modifications of the technical provisions of this regulation may be allowed where such modification provides equal facilitation.

(4) Problem sites. It is not the intent of this regulation to discourage development of sites with extreme conditions, for example, where housing would be built on steep slopes or recreation facilities provided in natural terrain, and where full accessibility might prove impractical.

(5) Interpretive decisions. Where any provision of this regulation can be shown to be clearly unreasonable or impractical as applied to a particular building or use, or if full compliance would create a safety hazard, because of a particular use or condition, any person may request to appear before the Architectural Barriers Advisory Committee of the Department of Housing, Buildings and Construction. After advice from the committee, the department shall render its decision in the matter and said decision shall be appealable to the Board of Housing, Buildings and Construction.

(6) Enforcement. It shall be the duty of the local building official or the state building official having plan review and inspection responsibility under the Kentucky Building Code to enforce the provisions of this regulation.

(7) Distribution of accessible elements. Residential units accessible to the physically handicapped must not be segregated from other units. For example, in large apartment complexes, hotels or motels, all the units or rooms for the disabled may not be placed in one (1) building but must be dispersed throughout

the complex.

(8) Appendix. All figures, tables and charts which are not included under a specific section of this regulation shall be found in Appendix A which is attached hereto. Any figures or numbers not in agreement with the written language of this regulation shall be superseded by said written words or numbers.

(9) Technical provisions. Sections 3 through 35 of this regulation constitute the technical provisions of this regulation.

Section 3. Minimum Requirements. (1) Accessible site and exterior facilities. An accessible site shall meet the following minimum requirements:

(a) At least one (1) accessible route complying with Section 5 of this regulation shall be provided from public transportation stops, accessible parking spaces, accessible passenger loading zones if provided, and public streets or sidewalks to an accessible building entrance.

(b) At least one (1) accessible route complying with Section 5 of this regulation shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(c) All objects that protrude from surfaces or posts into circulation paths shall comply with Section 5(3) of this regulation.

(d) Ground surfaces along accessible routes and in accessible spaces shall comply with Section 5(2) of this regulation.

(e) When parking is provided, parking spaces and access aisles shall comply with Section 6 of this regulation.

(f) Stairs shall comply with Section 9 of this regulation.

(g) All passenger elevators shall comply with Section 10 of this regulation.

(h) All doors or gates to accessible spaces and elements and along accessible routes shall comply with Section 13 of this regulation.

(i) All drinking fountains along accessible routes shall comply with Section 15 of this regulation.

(j) All toilet rooms provided for public use or as otherwise required by the Kentucky Building Code shall comply with Section 22 of this regulation. Bathing facilities on accessible routes shall comply with Section 23 of this regulation.

(k) Tactile warnings shall be provided at hazardous conditions as specified in Section 29 of this regulation.

(l) All signs shall comply with Section 30 of this regulation.

(m) If public telephones are provided, they shall comply with Section 31 of this regulation.

(n) If seating, tables, or work surfaces are provided in accessible spaces, they shall comply with Section 32 of this regulation.

(o) If places of assembly are provided, they shall comply with Section 33 of this regulation.

(2) Accessible buildings. Accessible buildings and facilities shall meet the following minimum requirements:

(a) At least one (1) accessible route complying with Section 5(1) of this regulation shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility.

(b) All objects that overhang circulation paths shall comply with Section 5(3) of this regulation.

(c) Ground and floor surfaces along accessible routes and in accessible rooms and spaces shall comply with Section 5(2) of this regulation.

(d) Stairs shall comply with Section 9 of this regulation. This requirement is not mandatory within dwelling units.

(e) All passenger elevators shall comply with Section 10 of this regulation.

(f) If windows intended to be operated by occupants are provided, then a reasonable number, but always at least one (1), of windows in each accessible space shall comply with Section 12 of this regulation.

(g) All doors to accessible spaces along accessible routes shall comply with Section 13 of this regulation.

(h) All principal entrances shall comply with Section 14 of this regulation.

(i) All drinking fountains along accessible routes shall comply with Section 15 of this regulation.

(j) All toilet rooms provided for public use or as otherwise required by the Kentucky Building Code shall comply with Section 22 of this regulation. Bathing facilities on accessible routes shall comply with Section 23 of this regulation.

(k) If storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, they shall comply with Section 25 of this regulation.

(l) Controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements (for example, light switches and dispenser controls), shall comply with Section 27 of this regulation.

(m) If emergency warning systems are provided, they shall comply with Section 28 of this regulation.

(n) Tactile warnings shall be provided at hazardous conditions as specified in Section 29 of this regulation.

(o) If signs are provided, they shall comply with Section 30 of this regulation.

(p) If public telephones are provided, they shall comply with Section 31 of this regulation.

(q) If seating tables, or work surfaces are provided in accessible spaces, they shall comply with Section 32 of this regulation.

(r) If places of assembly are provided, they shall comply with Section 33 of this regulation.

(s) If sleeping accommodations are provided, they shall comply with Section 34 of this regulation.

(3) Accessible housing. Accessible housing shall comply with the minimum requirements in subsections (1) and (2) of this section. It shall also meet the following requirements:

(a) Accessible dwelling units shall comply with Section 35 of this regulation.

(b) Each accessible dwelling unit shall be connected to an accessible entrance complying with Section 14 of this regulation by an accessible route complying with Section 5 of this regulation.

(c) Common use spaces and facilities (for example, swimming pools, playgrounds, entrances, rental offices, lobbies, elevators, mail box areas, lounges, storage rooms, halls, corridors, and the like) that serve one (1) or more accessible dwelling units shall comply with subsections (1) and (2) of this section. At least one (1) accessible route shall connect all accessible entrances to each accessible dwelling unit.

Section 4. Space Allowances and Reach Ranges. (1) Wheelchair passage width. The minimum clear width for single wheelchair passage shall be thirty-two (32) inches at a point and thirty-five (35) inches continuously.

(2) Width for wheelchair passing. The minimum width for two (2) wheelchairs to pass is sixty (60) inches.

(3) Wheelchair turning space. The space required for a wheelchair to make a 180 degree turn is a clear space of sixty (60) inches diameter or a T-shaped space with a minimum clear width of thirty-six (36) inches.

(4) Clear floor or ground space for wheelchairs.

(a) Size and approach. The minimum clear floor or ground space required to accommodate a single, stationary wheelchair and occupant is thirty (30) inches by forty-eight (48) inches. The minimum clear floor or ground space for wheelchairs may be positioned for forward or parallel approach to an object. Clear floor or ground space for wheelchairs may be part of the knee space required under some objects.

(b) Relationship of maneuvering clearances to wheelchair spaces. One (1) full unobstructed side of the clear floor or ground space for a wheelchair shall adjoin or overlap an accessible route or adjoin another wheelchair clear floor space. If a clear floor space is located in an alcove or otherwise confined in all or part of three (3) sides, additional maneuvering clearances shall be provided (see Appendix A, Figure 1).

(c) Surfaces of wheelchair spaces. Clear floor or ground spaces for wheelchairs shall comply with Section 5(2) of this regulation.

(5) High forward reach. If the clear floor space only allows forward approach to an object, the maximum high forward reach allowed shall be forty (40) inches. If the high forward reach is over an obstruction, reach and clearances shall be as shown in Appendix A, Figure 2.

(6) Side reach. If the clear floor space allows parallel approach by a person in a wheelchair, the maximum high side reach allowed shall be forty-eight (48) inches and the low side reach shall be no less than nine (9) inches above the floor. If the side reach is over an obstruction, the reach and clearances shall be as shown in Appendix A, Figure 3.

Section 5. Accessible Route, Ground and Floor Surfaces, and Protruding Objects. (1) Accessible route. All walks, halls, corridors, aisles, and other spaces that are of an accessible route shall comply with this subsection.

(a) Location.

1. At least one (1) accessible route shall be provided from public transportation stops, accessible parking and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve.

2. At least one (1) accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

3. At least one (1) accessible route shall connect accessible building or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or facility.

4. An accessible route shall connect at least one (1) accessible entrance of each accessible dwelling unit with those exterior and interior spaces and facilities that serve the accessible

dwelling unit.

(b) Width. The minimum clear width of an accessible route shall be thirty-six (36) inches except at doors. (See Section 13(5) of this regulation.) If a person in a wheelchair must make a turn around an obstruction, the minimum clear width of the accessible route shall be as shown in Appendix A, Figure 4.

(c) Passing space. If an accessible route has less than sixty (60) inches clear width, then passing spaces at least sixty (60) inches by sixty (60) inches shall be located at reasonable intervals not to exceed 200 feet. A T-intersection of two (2) corridors or walks is an acceptable passing place.

(d) Head room. Accessible routes shall comply with subsection (3)(b) of this section.

(e) Surface texture. The surface of an accessible route shall comply with subsection (2) of this section.

(f) Slope. An accessible route with a running slope greater than 1:20 is a ramp and shall comply with Section 8 of this regulation. Nowhere shall the cross slope of an accessible route exceed 1:50.

(g) Changes in level. Changes in level along an accessible route shall comply with subsection (2)(b) of this section. If an accessible route has changes in level greater than one-half (1/2) inch, then a curb ramp, ramp or elevator shall be provided that complies with Sections 7, 8 and 10 of this regulation. Stairs shall not be part of an accessible route.

(h) Doors. Doors along an accessible route shall comply with Section 13 of this regulation.

(i) Egress. At least one (1) accessible route serving any accessible space or element shall also serve as a means of egress.

(2) Ground and floor surfaces. Ground and floor surfaces along accessible routes and in accessible rooms and spaces, including floors, walks, ramps, stairs, and curb ramps, shall be stable, firm, and relatively nonslip under all weather conditions and shall comply with this subsection.

(a) Changes in level. Changes in level up to one-fourth (1/4) inch may be vertical and without edge treatment. Changes in level between one-fourth (1/4) inch and one-half (1/2) inch shall be beveled with a slope no greater than 1:2. Changes in level greater than one-half (1/2) inch shall be accomplished by means of a ramp that complies with Sections 7 or 8 of this regulation.

(b) Carpet. If carpet or carpet tile is used on a ground or floor surface, then it shall be securely attached; have a firm cushion, pad, or backing or no cushion or pad; and have a level loop, textured loop, level cut pile or level cut/uncut pile texture. The maximum combined thickness of pile, cushion, and backing shall be one-half (1/2) inch. Exposed edges and trim shall be securely fastened in place and shall comply with paragraph (a) of this subsection.

(c) Gratings. If gratings are located in walking surfaces, then they shall have spaces no greater than one-half (1/2) inch wide in one (1) direction. If gratings have elongated openings, then they shall be placed so that the long dimension is perpendicular to the dominant direction of travel.

(3) Protruding objects.

(a) Objects projecting from walls (for example, telephones) with their leading edges between twenty-seven (27) inches and eighty (80)

inches above the finished floor shall protrude no more than four (4) inches into walks, halls, corridors, passageways, or aisles. Objects mounted with their leading edges at or below twenty-seven (27) inches above the finished floor may protrude any amount. Free standing objects mounted on posts or pylons may overhang twelve (12) inches maximum from twenty-seven (27) inches to eighty (80) inches above the ground or finished floor. Protruding objects shall not reduce the clear width of an accessible route or maneuvering space. (See Appendix A, Figure 5.)

(b) Head room. Walks, halls, corridors, passageways, aisles, or other circulation spaces shall have eighty (80) inches in minimum clear head room. (See Appendix A, Figure 5.)

Section 6. Parking and Passenger Loading Zones. (1) Minimum number. Where parking spaces are provided, the minimum number of spaces shall be in accordance with Table 1 and shall comply with subsections (2) through (4) of this section. Where passenger loading zones are provided, at least one (1) shall comply with subsection (5) of this section.

TABLE I

1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 or over	2% of total - 20 plus 1 for each 200 over 1000

(2) Parking spaces. Parking spaces for disabled people shall be at least ninety-six (96) inches wide and shall have an adjacent access aisle sixty (60) inches wide minimum (see Appendix A, Figure 6). Parking access aisles shall be part of the accessible route to the building or facility entrance and shall comply with Section 5(1) of this regulation. Two (2) accessible parking spaces may share a common access aisle. Parked vehicle overhangs shall not reduce the clear width of an accessible circulation route.

(3) Signage. Accessible parking spaces shall be designated as reserved for the disabled by a sign showing the international symbol of accessibility. Such signs shall be above grade.

(4) Passenger loading zones. Passenger loading zones shall provide an access aisle at least forty-eight (48) inches wide and twenty (20) feet long adjacent and parallel to the vehicle pull-up space. If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with Section 7 of this regulation shall be provided.

(5) Vertical clearance. Provide minimum vertical clearance of eight (8) feet six (6) inches at accessible parking spaces, at accessible passenger loading zones and along vehicle access route to such areas from site entrances.

Section 7. Curb Ramps. (1) Location. Curb ramps complying with this section shall be provided wherever an accessible route crosses a curb.

(2) Slope. Slopes of curb ramps shall comply with Table 815 of the Kentucky Building Code. The slope shall be measured at a ratio of rise to horizontal run.

(3) Width. The minimum width of a curb ramp shall be thirty-six (36) inches, exclusive of flared sides.

(4) Surface. Surfaces of curb ramps shall comply with Section 5(2) of this regulation. Transitions from ramps to walks and ramps to gutters or streets shall be flush and free from abrupt changes.

(5) Sides of curb ramps. Curb ramps shall comply with Figure 20. If a curb ramp is located where pedestrians must walk across the ramp, then it shall have flared sides; the maximum slope of the flare shall be 1:10. Curb ramps with returned curbs may be used where pedestrians would not normally walk across the ramp. Curb ramps shall not have handrails.

(6) Built-up curb ramps. Built-up type curb ramps that project into a vehicular way, shall not be permitted in new construction. They may be permitted in existing conditions only where such application is determined to be the only reasonable means of access and where the location of the built-up curb ramp is not in an uncontrolled vehicular way. Built-up curb ramps shall comply with this section and Figure 20b.

(7) Warning textures. A curb ramp shall have a tactile warning texture contrasting to adjoining surfaces and complying with Section 29 of this regulation, extending the full width and depth of the curb ramp, including any flares.

(8) Obstructions. Curb ramps shall be located or protected to prevent their obstruction by parked vehicles.

(9) Location at marked crossings. Curb ramps at marked crossings shall be wholly contained within the markings, excluding any flared sides.

(10) Diagonal curb ramps. If diagonal (or corner type) curb ramps have returned curbs or other well defined edges, such edges shall be parallel to the direction of pedestrian flow. If diagonal curb ramps have flared sides, they shall also have at least a twenty-four (24) inch long segment of straight curb located on each side of the curb ramp and within the marked crossing.

(11) Islands. Any raised islands in crossings shall be cut through level with the street or have curb ramps at both sides and a level area at least forty-eight (48) inches long in the part of the island intersected by the crossings.

(12) Uncurbed intersections. If there is no curb at the intersection of a walk and an adjoining street, parking lot, or busy driveway, then the walk shall have a tactile warning texture complying with Section 29(5) of this regulation at the edge of the vehicular way.

Section 8. Ramps. Any part of an accessible route with a slope greater than 1:20 shall be considered a ramp and shall comply with Section 815 of the Kentucky Building Code as filed in 815 KAR 7:020.

Section 9. Stairs. Stairways shall comply with Section 816 of the Kentucky Building Code as filed in 815 KAR 7:020. These specifications are not mandatory for stairs within dwelling units.

Section 10. Elevators. (1) All public passenger elevators shall be required to be accessible and shall comply with the provisions of Article 21 of the Kentucky Building Code as filed in 815 KAR 7:020.

(2) At least one (1) public passenger elevator shall be required in buildings three (3) stories or greater in height; except that residential buildings three (3) stories in height and containing no more than twenty-four (24) units shall not be required to have an elevator.

(3) Elevators are not mandatory for buildings of less than three (3) stories. If an elevator is provided, however, it shall have dimensions sufficient to accommodate a person in a wheelchair. This means the vertical access for wheelchairs from one (1) level to the other is not required except in buildings three (3) stories or more.

Section 11. Platform Lifts. Platform lifts are permitted if they conform to ANSI Standards for inclined and vertical wheelchair lifts and if they are not in violation of fire safety regulations as established by the department.

Section 12. Windows. (1) General. If windows intended to be operated by occupants are provided, at least one (1) operable window in each accessible space shall comply with this section.

(2) Window hardware. Windows requiring pushing, pulling or lifting to open (for example, double hung, sliding, or casement and awning units without cranks) shall require no more than five (5) pounds to open or close. Locks, cranks, and other window hardware shall comply with Section 27 of this regulation.

Section 13. Doors. (1) General. All doors to accessible spaces and elements and along accessible routes shall comply with the requirements of this section.

(2) Revolving doors and turnstiles. Revolving doors or turnstiles shall not be the only means of passage at an accessible entrance or along an accessible route.

(3) Gates. Gates, including ticket gates, shall meet all applicable specifications of this section.

(4) Double-leaf doorways. If doorways have two (2) door leaves, then at least one (1) leaf shall meet the specifications in subsections (5) and (6) of this section. That leaf shall be an active leaf.

(5) Clear width. Doorways shall have a minimum clear opening of thirty-two (32) inches with the door open ninety (90) degrees, measured between the face of the door and the stop. Openings more than twenty-four (24) inches in depth shall have a minimum clear opening of thirty-six (36) inches.

(6) Maneuvering clearances at doors. Minimum maneuvering clearances for doors that are not automatic shall be as shown in Appendix A, Figure 7. The floor or ground area within the required clearances shall be level and clear. Doors required to be a minimum of forty-four (44) inches in institutional buildings shall be exempt from the requirements for space at the latch side of the door.

(7) Two (2) doors in series. The minimum space between two (2) doors in series shall be forty-eight (48) inches plus the width of any door swinging into the space. Doors in series

shall swing either in the same direction or away from the space between the doors.

(8) Thresholds at doorways. Thresholds at doorways shall not exceed one-half (1/2) inch in height except that thresholds at exterior sliding doors shall not exceed three-fourths (3/4) inch. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2, and shall meet the requirements of Section 5(2)(a) of this regulation.

(9) Door hardware. Handles, pulls, latches, locks and other operating devices on accessible doors shall have a shape that is easy to grasp with one (1) hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms and U-shaped handles are acceptable designs. When sliding doors are fully open, operating hardware shall be exposed and usable from both sides. Doors to hazardous areas shall have hardware complying with Section 29(3) of this regulation.

(10) Door closers. If a door has a closer, then the sweep period of the closer shall be adjusted so that from an open position of seventy (70) degrees, the door will take at least three (3) seconds to move to a point three (3) inches from the latch, measured to the leading edge of the door.

(11) Door opening force. The maximum force for pushing or pulling open a door shall be as follows:

(a) Fire doors shall have the minimum opening force of fifteen (15) pounds and as required in Section 812.5.4 of the Kentucky Building Code.

(b) Other doors: exterior hinged doors, 8.5 pounds; interior hinged doors, five (5) pounds; sliding or folding doors, five (5) pounds. These forces do not apply to the force required to retract latch bolts or disengage other devices that may hold the door in a closed position.

(12) Automatic doors and power-assisted doors. If an automatic door is used, then it shall comply with American National Standard for Power-operated Doors, ANSI A156.10-1979. Slowly opening, low-powered, automatic doors shall be considered a type of custom design installation as described in paragraph 1.1.1 of ANSI A156.10-1979. Such doors shall not open to back check faster than three (3) seconds and shall require no more than fifteen (15) pounds to stop door movement. If a power-assisted door is used, its door opening force shall comply with subsection (11) of this section and its closing shall conform to the requirements in Section 10 of ANSI A156.10-1979.

(13) Framed glass doors. Where framed glass doors are used, the bottom rail shall be a minimum height of seven and one-half (7 1/2) inches.

Section 14. Entrances. (1) Principal entrances. Principal entrances to a building or facility shall be part of an accessible route and shall comply with Section 5(1) of this regulation. Such entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available. They shall also be connected by an accessible route to all accessible spaces or elements within the building or facility.

(2) Service entrances. A service entrance

shall not be the sole accessible entrance unless it is the only entrance to a building or facility (for example, in a factory or garage).

Section 15. Drinking Fountains and Water Coolers. (1) Minimum number. Where drinking fountains or water coolers are required, a reasonable number, but always at least one (1) per floor and/or wing, shall comply with this section and shall be on an accessible route.

(2) Spout height. Spouts shall be no higher than thirty-six (36) inches, measured from the floor or ground surfaces to the spout outlet.

(3) Spout location. The spouts of drinking fountains and water coolers shall be at the front of the unit and shall direct the water flow in a trajectory that is parallel or nearly parallel to the front of the unit. The spout shall provide a flow of water so as to allow the insertion of a cup or glass under the flow of water.

(4) Controls. Controls shall comply with Section 27(4) of this regulation.

(5) Clearances. Wall and post mounted cantilevered units shall have a clear knee space between the bottom of the apron and the floor or ground at least twenty-seven (27) inches high, thirty (30) inches wide, and seventeen (17) inches to nineteen (19) inches deep. Such units shall also have a minimum clear floor space thirty (30) inches by forty-eight (48) inches to allow a person in a wheelchair to make a parallel approach to the unit. This clear floor space shall comply with Section 4(4) of this regulation.

Section 16. Water Closets. Accessible water closets shall comply with this section. For water closets in adaptable dwelling units, see Section 35(4)(b) of this regulation.

(1) Clear floor space. Clear floor space for water closets not in stalls shall comply with Appendix A, Figure 9. Clear floor space may be arranged to allow either a left-handed or right-handed approach.

(2) Height. The height of water closets shall be seventeen (17) inches to nineteen (19) inches measured to the top of the toilet seat (see Appendix A, figure 10). Seats shall not be sprung to return to a lifted position when not in use.

(3) Grab bars. Grab bars for water closets shall comply with Appendix A, Figures 9 and 10, and Section 4 of this regulation. Grab bars may be mounted by any desired method as long as they have a gripping surface at the locations shown and do not obstruct the required floor area.

(4) Flush controls. Flush controls shall be hand operated and shall comply with Section 27(4) of this regulation. Controls for flush valves shall be mounted no more than forty (40) inches above the floor.

(5) Dispensers. Toilet paper dispensers shall be installed within reach as shown in Appendix A, Figure 10. Dispensers shall not control delivery and shall permit continuous paper flow.

Section 17. Toilet Stalls. (1) Location. Accessible toilet stalls shall be on an accessible route and shall meet the requirements of this section.

(2) Water closets. Water closets in stalls shall comply with Section 16 of this regulation.

(3) Size and arrangement. The size and arrangement of the toilet stalls shall comply

with Appendix A, Figure 11(a). In existing buildings alternate stalls (Appendix A, Figure 11(b)) may be used where available space prohibits installation of the standard stall. Arrangements shown for stalls may be reversed to allow either a left or right-handed approach.

(4) Toe clearances. In standard stalls, the front partition and at least one (1) side partition shall provide a toe clearance of at least nine (9) inches above the floor. If the depth of the stall is greater than sixty (60) inches, then the toe clearance is not required.

(5) Doors. Toilet stall doors shall comply with Section 13 of this regulation. Doors of toilet stalls shall be out-swinging. Doors on toilet stalls shall have either a self-closing mechanism or a pull mounted on the hinged side of the stall door.

(6) Grab bars. Provide grab bars at toilet stalls as shown in Appendix A, Figures 10 and 11. Grab bars may be mounted by any desired method as long as they have a gripping surface at the locations shown and do not obstruct the required clear floor area. Grab bars shall comply with Section 26 of this regulation.

Section 18. Urinals. (1) General. Accessible urinals shall comply with this section.

(2) Heights. Urinals shall be stall-type or wall-hung with an elongated rim at a maximum of seventeen (17) inches above the floor.

(3) Clear floor space. A clear floor space thirty (30) inches by forty-eight (48) inches shall be provided in front of urinals to allow forward approach. This clear space shall adjoin or overlap an accessible route and shall comply with Section 4(4) of this regulation.

(4) Flush controls. Flush controls shall be hand operated, shall comply with Section 27(4) of this regulation and shall be mounted no more than forty (40) inches above the finished floor.

(5) Urinal shields. Urinal shields that do not extend beyond the front edge of the urinal rim may be provided with twenty-nine (29) inches clearance between them.

Section 19. Lavatories and Mirrors. The requirements of this section shall apply to lavatory fixtures, vanities, and built-in lavatories.

(1) Height and clearances. Lavatories shall be mounted with a clearance of at least twenty-nine (29) inches from the floor to the bottom of the apron. Thirty-four (34) inches is the maximum height of top of the front lip of the lavatory. Knee and toe clearances shall comply with Appendix A, Figure 12.

(2) Clear floor space. A clear floor space thirty (30) inches by forty-eight (48) inches complying with Section 4(4) of this regulation shall be provided in front of a lavatory to allow a forward approach. Such clear floor space shall adjoin or overlap an accessible route and shall extend a maximum of nineteen (19) inches underneath the lavatory.

(3) Exposed pipes and surfaces. If hot water exceeds 120 degrees Fahrenheit, the hot water and drain pipes under lavatories shall be insulated or otherwise covered. There shall be no sharp or abrasive surfaces under lavatories.

(4) Faucets. Faucets shall comply with Section 27(4) of this regulation. Lever-operated, push-type and electronically controlled mechanisms are examples of acceptable designs. Self-closing valves are allowed if the faucet

remains open for at least ten (10) seconds.

(5) Mirrors. Mirrors shall be mounted with the bottom edge no higher than forty (40) inches from the floor.

Section 20. Bathtubs. (1) General. Accessible bathtubs shall comply with this section. For bathtubs in accessible dwelling units, see Section 35(4)(d) of this regulation.

(2) Floor space. Clear floor space in front of bathtubs shall be as shown in Appendix A, Figure 13.

(3) Seat. An in-tub seat or a seat at the head end of the tub shall be provided as shown in Appendix A, Figures 13 and 14. The structural strength of seats and their attachments shall comply with Section 26(3) of this regulation. Seats shall be mounted securely and shall not slip during use.

(4) Grab bars. Grab bars complying with Section 26 of this regulation shall be provided as shown in Appendix A, Figures 13 and 14.

(5) Controls. Faucets and other controls complying with Section 27(4) of this regulation shall be located as shown in Appendix A, Figure 14.

(6) Shower unit. A shower spray unit with a hose at least sixty (60) inches long that can be used as a fixed shower head or as a hand-held shower shall be provided.

(7) Bathtub enclosures. If provided, enclosures for bathtubs shall not obstruct controls or transfer from wheelchairs onto bathtub seats or into tubs. Enclosures on bathtubs shall not have tracks mounted on their rims.

Section 21. Shower Stalls. (1) General. Accessible shower stalls shall comply with this section. For shower stalls in accessible dwelling units, see Section 35(4)(e) of this regulation.

(2) Size and clearances. Shower stall size and clear floor space shall comply with Appendix A, Figure 15.

(3) Seat. A seat shall be provided in transfer shower stalls as shown in Appendix A, Figure 16. The seat shall be mounted seventeen (17) inches to nineteen (19) inches from the bathroom floor and shall extend the full depth of the stall. The seat shall be on the wall opposite the controls. The structural strength of seats and their attachments shall comply with Section 26(3) of this regulation.

(4) Grab bars. Grab bars complying with Section 26 of this regulation shall be provided as shown in Appendix A, Figure 17.

(5) Controls. Faucets and other controls complying with Section 27(4) of this regulation shall be located as shown in Appendix A, Figure 17. In transfer shower stalls all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.

(6) Shower unit. A shower spray unit with a hose at least sixty (60) inches long that can be used as a fixed shower head or as a hand-held shower shall be provided.

(7) Curbs. If provided, curbs in transfer shower stalls shall be no higher than four (4) inches. Roll-in shower stalls shall not have curbs.

(8) Shower enclosures. If provided, enclosures for shower stalls shall not obstruct controls or obstruct transfer from wheelchairs onto shower seats.

Section 22. Toilet Rooms. (1) Minimum number. All toilet rooms provided for public use or otherwise required by the Kentucky Building Code shall be on an accessible route and shall comply with this section.

(2) Doors. All doors to accessible toilet rooms shall comply with Section 13 of this regulation. Doors shall not swing into the clear floor space required for any fixture.

(3) Clear floor space. The accessible fixtures and controls required in subsections (4), (5), (6) and (7) of this section shall be on an accessible route. An unobstructed turning space complying with Section 4(3) of this regulation shall be provided within an accessible toilet room. The clear floor space at fixtures and controls, the accessible route, and the turning space may overlap.

(4) Water closets. If toilet stalls are provided, then a reasonable number, but always at least one (1), shall comply with Section 17 of this regulation; its water closet shall comply with Section 15 of this regulation. If water closets are not in stalls, then a reasonable number, but always at least one (1), of water closets shall comply with Section 16 of this regulation.

(5) Urinals. If urinals are provided, a reasonable number, but always at least one (1), shall comply with Section 18 of this regulation.

(6) Lavatories and mirrors. If lavatories and mirrors are provided, a reasonable number, but always at least one (1) of each, shall comply with Section 19 of this regulation.

(7) Controls and dispensers. If controls, dispensers, receptacles, or other equipment is provided, at least one (1) of each shall be on an accessible route and shall comply with Section 27 of this regulation.

(8) Emergency lighting. Where emergency lighting in a building is required by Section 624 of the Kentucky Building Code, the emergency lighting shall be provided in accessible toilet rooms.

Section 23. Bathrooms, Bathing Facilities and Shower Rooms. (1) Minimum number. Bathrooms, bathing facilities, or shower rooms on an accessible route shall comply with this section. For bathrooms in accessible dwelling units, see Section 35(4) of this regulation.

(2) Doors. Doors to accessible bathrooms shall comply with Section 13 of this regulation. Doors shall not swing into the floor space required for any fixture.

(3) Clear floor space. The accessible fixtures and controls required in subsections (4), (5), (6), (7), (8), and (9) of this section shall be on an accessible route. An unobstructed turning space complying with Section 4(3) of this regulation shall be provided within an accessible bathroom. The clear floor space at fixtures and controls, the accessible route, and the turning space may overlap.

(4) Water closets. If toilet stalls are provided, then a reasonable number, but always at least one (1), shall comply with Section 17 of this regulation; its water closet shall comply with Section 16 of this regulation. If water closets are not in stalls, then a reasonable number, but always at least one (1), shall comply with Section 16 of this regulation.

(5) Urinals. If urinals are provided, then a reasonable number, but always at least one (1), shall comply with Section 18 of this regulation.

(6) Lavatories and mirrors. If lavatories and mirrors are provided, then a reasonable number, but always at least one (1) of each, shall comply with Section 19 of this regulation.

(7) Controls and dispensers. If controls, dispensers, receptacles, or other equipment is provided, at least one (1) of each shall be on an accessible route and shall comply with Section 27 of this regulation.

(8) Bathing and shower facilities. If tubs or showers are provided, then at least one (1) accessible tub that complies with Section 20 of this regulation or at least one (1) accessible shower that complies with Section 20 of this regulation or at least one (1) accessible shower that complies with Section 21 of this regulation shall be provided.

(9) Medicine cabinets. If medicine cabinets are provided, at least one (1) shall be located with a usable shelf no higher than forty (40) inches above the floor space. The floor space shall comply with Section 4(4) of this regulation.

Section 24. Sinks. (1) General. If accessible sinks are provided, they shall comply with this section. Sinks in kitchens of accessible dwelling units shall comply with Section 35(5)(e) of this regulation.

(2) Height. Sinks shall be mounted with the counter or rim no higher than thirty-four (34) inches from the floor.

(3) Knee clearance. Knee clearance that is twenty-seven (27) inches high, thirty (30) inches wide, and nineteen (19) inches deep shall be provided underneath sinks.

(4) Depth. Each sink shall be a maximum of six and one-half (6 1/2) inches deep.

(5) Clear floor space. A clear floor space at least thirty (30) inches by forty-eight (48) inches complying with Section 4(4) of this regulation shall be provided in front of a sink to allow forward approach. The clear floor space shall be on an accessible route and shall extend a maximum of nineteen (19) inches underneath the sink.

(6) Exposed pipes and surfaces. If hot water exceeds 120 degrees Fahrenheit, hot water and drain pipes under sinks shall be insulated or otherwise covered. There shall be no sharp or abrasive surfaces under sinks.

(7) Faucets. Faucets shall comply with Section 27(4) of this regulation. Lever-operated push-type, touch-type, or electronically controlled mechanisms are acceptable designs.

Section 25. Storage. (1) General. Accessible storage facilities such as cabinets, shelves, closets, and drawers shall comply with this section.

(2) Clear floor space. A clear floor space at least thirty (30) inches by forty-eight (48) inches complying with Section 4(4) of this regulation that allows either a forward or parallel approach by a person using a wheelchair shall be provided at accessible storage facilities.

(3) Height. Accessible storage spaces shall be within at least one (1) of the reach ranges specified in Section 4(5) and (6) of this regulation. Clothes rods shall be a maximum of forty-eight (48) inches from the floor.

(4) Hardware. Hardware for accessible storage facilities shall comply with Section 27(4) of

this regulation. Touch latches and U-shaped pulls are acceptable.

Section 26. Handrails, Grab Bars and Tub and Shower Seats. (1) General. All handrails, grab bars, and tub and shower seats shall comply with this section.

(2) Size and spacing of grab bars and handrails. The outside diameter or width of the gripping surfaces of handrail or grab bar shall be one and one-fourth (1 1/4) inch to one and one-half (1 1/2) inch or the shape shall provide an equivalent gripping surface. If handrails or grab bars are mounted adjacent to a wall, the space between the wall and the handrail or grab bars shall be one and one-half (1 1/2) inch (see Appendix A, Figure 18). Handrails may be located in a recess if the recess is a maximum of three (3) inches deep and extends at least eighteen (18) inches above the top of the rail (see Appendix A, Figure 18).

(3) Structural strength. Handrails, grab bars, tub and shower seats, fasteners, and mounting devices shall support a minimum concentrated load of 250 pounds and shall not rotate in their fittings.

(4) Eliminating hazards. A handrail or grab bar and any wall or other surface adjacent to it shall be free of any sharp or abrasive elements. Edges shall have a minimum radius of one-eighth (1/8) inch.

Section 27. Controls and Operating Mechanisms.

(1) General. Controls and operating mechanisms in accessible spaces, along accessible routes, or as part of accessible elements (for example, light switches, dispenser controls) shall comply with this section.

(2) Clear floor space. Clear floor space complying with Section 4(4) of this regulation that allows a forward or parallel approach by a person using a wheelchair shall be provided at controls, dispensers, receptacles, and other operable equipment.

(3) Height. The highest operable part of all controls, dispensers, receptacles, and other operable equipment shall be placed within at least one (1) of the reach ranges specified in Section 4(5) and (6) of this regulation. Except where the use of special equipment dictates otherwise, electrical and communications systems receptacles on walls shall be mounted no less than fifteen (15) inches above the floor.

(4) Operation. Controls and operating mechanisms shall be operable with one (1) hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than five (5) pounds of force.

Section 28. Alarms. (1) General. If emergency warning systems are provided, they shall include both audible alarms complying with subsection (2) of this section and visual alarms complying with subsection (3) of this section. In facilities with sleeping accommodations, accessible sleeping accommodations shall have an auxiliary visual alarm system complying with subsection (4) of this section.

(2) Audible alarms. Audible emergency alarms shall produce a sound that exceeds the ambient room or space noise by at least fifteen (15) decibels or exceeds any maximum sound level with a duration of thirty (30) seconds by five (5) decibels, whichever is louder. Sound levels for

alarm signals shall not exceed 120 decibels.

(3) Visual alarms. Electronically powered internally illuminated emergency exit signs or adjacent devices shall flash as a visual emergency alarm in conjunction with audible emergency alarms. The flashing frequency of visual alarm devices shall be less than five (5) Hz. If such alarms use electricity from the building as a power source, then they shall be installed on the same system as the audible emergency alarms.

(4) Auxiliary alarms. Accessible sleeping accommodations shall have a visual alarm connected to the building emergency alarm system or shall have a standard 110-volt electrical receptacle into which such an alarm could be connected. Instructions for use of the auxiliary alarm or connection shall be provided.

(5) Alarm activators. Alarm activators shall comply with Section 27 of this regulation, Controls and Operating Mechanisms.

(6) Special alarm systems. Specialized alarm systems utilizing advanced technology will be considered on a case-by-case basis.

Section 29. Tactile Warnings. (1) General. Where tactile warnings are required, they shall comply with this section.

(2) Tactile warnings on walking surfaces. Tactile warning textures on walking surfaces shall contrast with that of the surrounding surface. Raised strips or grooves shall comply with Appendix A, Figure 19. Grooves may be used indoors only.

(3) Tactile warnings on doors to hazardous areas. Doors that lead to areas that might prove dangerous to a blind person (for example, doors to loading platforms, mechanical rooms, stages, and the like) shall be made identifiable to the touch by a textured surface on the door handle, knob, pull, or other operating hardware. This textured surface may be made by knurling or roughening or by a material applied to the contact surface. Such textured surfaces shall not be provided for emergency exit doors or any doors other than those to hazardous areas.

(4) Tactile warnings at stairs. All stairs (except those in dwelling units, in enclosed stair towers, or set to the side of the path of travel) shall have a tactile warning at the top of stair runs.

(5) Tactile warnings at hazardous vehicular areas. If a walk crosses or adjoins a frequently used vehicular way, and if there are no curbs, railings, or other elements detectable by a person who has a severe visual impairment separating the pedestrian and vehicular areas, then the boundary between the areas shall be defined by a continuous thirty-six (36) inch wide tactile warning texture complying with subsection (2) of this section.

(6) Tactile warnings at reflecting pools. The edges of reflecting pools shall be protected by railings, walls, curbs, or tactile warnings complying with subsection (2) of this section.

(7) Standardization. Textured surfaces for tactile warnings shall be standard within a building, facility, site, or complex of buildings.

Section 30. Signage. (1) General. All signage that provides emergency information of general circulation directions or identifies rooms and spaces shall comply with this section.

(2) Character proportion and contrast. Letters

and numbers on sign systems shall:

(a) Have a width-to-height ratio of between 3:5 and 1:1.

(b) Have a stroke width-to-height ratio of between 1:5 and 1:10.

(c) Contrast in value with their backgrounds, preferably light letters on a dark background.

(d) Have a matte finish on a matte finish background.

(3) Raised or incised characters. Provide numbers and letters that are:

(a) Raised or incised from the background surface one thirty-second (1/32) inch. Also incise or raise symbols and pictographs in this manner.

(b) Between five-eighths (5/8) inch and two (2) inches high.

(c) Sans serif with sharply defined edges.

(d) If incised, provided with at least one-fourth (1/4) inch stroke width.

(4) Mounting location and height. Signage shall be placed in a standardized location throughout a building or facility as follows:

(a) Interior signage shall be located on the door or alongside of the door on the latch side and shall be mounted at between four (4) feet, six (6) inches and five (5) feet, six (6) inches above finished floor.

(b) Exterior signage shall be installed at entrances and walks to direct individuals to accessible routes and entrances as required.

(c) Symbols of accessibility. If accessible facilities are identified, then the international sign of accessibility shall be used.

Section 31. Telephones. (1) General. If public telephones are provided, then they shall comply with this section.

(2) Clear floor or ground space. A clear floor or ground space at least thirty (30) inches by forty-eight (48) inches that allows either a forward or parallel approach by a person using a wheelchair shall be provided at telephones. The clear floor or ground space shall comply with Section 4(4) of this regulation. Bases, enclosures, and fixed seats shall not impede approaches to telephones by people who use wheelchairs.

(3) Mounting height. The highest operable part of the telephone shall be within reach ranges specified in Section 4(5) or (6) of this section. Telephones mounted diagonally shall have the highest operable part no higher than fifty-four (54) inches above the floor.

(4) Enclosures. If telephone enclosures are provided, they may overhang the clear floor space required in subsection (2) of this section within the following limits:

(a) Side reach possible. The overhang shall be no greater than nineteen (19) inches; the height of the lowest overhanging part shall be equal to or greater than twenty-seven (27) inches.

(b) Full-height enclosures. Entrances to full-height enclosures shall be thirty (30) inches clear minimum.

(c) Forward reach required. If the overhang is greater than twelve (12) inches, then the clear width of the enclosure shall be thirty (30) inches minimum, if the clear width of the enclosure is less than thirty (30) inches, then the height of the lowest overhanging part shall be equal to or greater than twenty-seven (27) inches.

(d) Where telephone enclosures protrude into

walls, halls, corridors, or aisles, they shall also comply with Section 5(3) of this regulation.

(5) Equipment for hearing impaired people. Telephones shall be equipped with a receiver that generates a magnetic field in the area of the receiver cap. If banks of public telephones are provided, a minimum of five (5) percent, but always at least one (1), in a building or facility shall be equipped with a volume control.

(6) Controls. Telephones shall have push-button controls where service for such equipment is available.

(7) Telephone books. Telephone books, if provided, shall be located so that they can be used by a person in a wheelchair.

(8) Cord length. The cord from the telephone to the handset shall be at least twenty-nine (29) inches long.

Section 32. Seating, Tables, and Work Surfaces. (1) Minimum number. If fixed or built-in seating, tables, or work surfaces are provided in accessible spaces, the minimum number of spaces for use by persons in wheelchairs shall be in accordance with Table II of Section 33 of this regulation.

(2) Seating. If seating spaces for people in wheelchairs are provided at tables, counters, or work surfaces, clear floor space complying with Section 4(4) of this regulation shall be provided. Such clear floor space shall not overlap knee space by more than nineteen (19) inches.

(3) Knee clearances. If seating for people in wheelchairs is provided at tables, counters, and work surfaces, knee spaces at least twenty-seven (27) inches high, thirty (30) inches wide, and nineteen (19) inches deep shall be provided.

(4) Height of work surfaces. The tops of tables and work surfaces shall be from twenty-eight (28) inches to thirty-four (34) inches from the floor to ground.

Section 33. Assembly Areas. (1) Minimum number. Assembly areas shall have designated spaces for wheelchair use in each assembly area that complies with this section and the minimum number of wheelchair spaces shall be in accordance with Table II. Assembly areas with audio-amplification systems shall have a listening system complying with subsections (6) and (7) of this section to assist persons with severe hearing loss in the appreciation of audio presentations.

TABLE II

50 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
Over 500	10 plus a reasonable number not to exceed 1% to be determined by Section 1(5).

(2) Size of wheelchair locations. Each wheelchair location shall provide minimum clear ground or floor space of sixty-six (66) inches wide by forty-eight (48) inches deep for forward or rear access and sixty-six (66) inches deep for side access and shall accommodate two (2)

people in wheelchairs.

(3) Placement of wheelchair locations.

(a) Wheelchair areas shall be an integral part of any fixed seating plan and shall be dispersed throughout the seating area. They shall adjoin an accessible route that also serves as a means of egress in case of emergency and shall be located to provide lines of sight comparable to those for all viewing areas.

(b) Exception. In alteration work where it is structurally impossible to alter seating location to disperse seating throughout, seating may be located in collected areas, but must adjoin an accessible route.

(4) Surfaces. The ground or floor at wheelchair locations shall be level and shall comply with Section 5(2) of this regulation.

(5) Access to performing areas. An accessible route shall be provided to performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

(6) Placement of listening systems. If the listening system provided serves individual fixed seats, then such seats shall be located within a fifty (50) foot viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

(7) Types of listening systems. Audio loops and radio frequency systems are two (2) acceptable types of listening systems. The department will rely upon the advice of the Kentucky Commission for the Deaf and Hearing Impaired in its interpretations and enforcement relative to the requirements for access to the hearing impaired.

(8) The provisions of this section are intended to apply to performing arts and movie theaters as well as public meeting places, auditoriums and gymnasiums, among others.

Section 34. Hotels and Motels. Minimum requirements. In hotel and motel buildings, lodging houses, boarding houses, and dormitory buildings, providing sleeping accommodations for twenty (20) or more individuals, a minimum of five (5) percent of those accommodations shall be accessible to and shall comply with Section 3(1) and (2) of this regulation.

Section 35. Dwelling Units. Where multifamily housing projects are required to be accessible, a minimum of one (1) in twenty-five (25) dwelling units shall meet the requirements of this section.

(1) An accessible dwelling unit shall be on an accessible route. An accessible dwelling unit shall have the following accessible elements and spaces as a minimum:

(a) Common spaces and facilities serving individual accessible dwelling units (for example, entry walks, trash disposal facilities, and mail boxes) shall comply with Sections 3 through 33 of this section.

(b) Accessible spaces shall have maneuvering space complying with Section 4(2) and (3) of this regulation and surfaces complying with Section 5(2) of this regulation.

(c) At least one (1) accessible route complying with Section 5(1) of this regulation shall connect the accessible entrances with all accessible spaces and elements within the dwelling units.

(d) If parking spaces are assigned for use with individual dwelling units, then at least

one (1) parking space per accessible dwelling unit shall comply with Section 6(3) of this regulation.

(e) If windows intended to be operated by occupants are provided, then they shall comply with Section 12 of this regulation.

(f) Doors to and in accessible spaces that are intended for passage shall comply with Section 13 of this regulation.

(g) All entrances to accessible dwelling units shall comply with Section 14 of this regulation.

(h) Storage in accessible spaces in dwelling units, including cabinets, shelves, closets, and drawers, shall comply with Section 25 of this regulation.

(i) All controls in accessible spaces shall comply with Section 27 of this regulation. Those portions of heating, ventilating, and air conditioning equipment requiring regular, periodic maintenance and adjustment by the resident of a dwelling shall be accessible to people in wheelchairs. If air distribution registers must be placed in or close to ceilings for proper air circulation, this specification shall not apply to registers.

(j) If emergency alarms are provided, alarm connections complying with Section 28(4), (5), and (6) of this regulation shall be provided in the dwelling unit.

(k) If telephone connections are installed in the dwelling unit, a reasonable number, but always at least one (1), shall comply with Section 31(2) and (3) of this regulation.

(l) A reasonable number, but always at least one (1), of full bathrooms shall comply with subsection (4) of this section. A full bathroom shall include a water closet, a lavatory, and a bathtub or shower.

(m) The kitchen shall comply with subsection (5) of this section.

(n) If laundry facilities are provided, they shall comply with subsection (6) of this section.

(o) The following spaces shall be accessible and shall be on an accessible route:

1. The living area.
2. The dining area.
3. The sleeping area, or the bedroom in one (1) bedroom dwelling units, or at least two (2) bedrooms or sleeping spaces in dwelling units with two (2) or more bedrooms.
4. Patios, terraces, balconies, carports, and garages, if provided with the dwelling unit.

(2) Adaptability. The specifications of subsection (5) of this section are based on the concept of adaptability.

(3) Consumer information. To ensure that the existence of adaptable features will be known to the owner or occupant of a dwelling, consumer information shall be provided for each accessible dwelling unit for rent or sale.

(4) Bathrooms. Bathrooms shall be on an accessible route and shall comply with the requirements of this subsection.

(a) Minimum dimensions. Accessible bathrooms shall accommodate wheelchair turning space in accordance with Section 4(3) of this regulation. Door operation shall not interfere with maneuverability.

(b) Water closets.

1. Clear floor space at the water closet shall be as shown in Appendix A, Figure 9. The water closet may be located with the clear area at either the right or left side of the toilet.

2. The height of the water closet shall be at least seventeen (17) to nineteen (19) inches

measured to the top of the toilet seat.

3. Grab bars shall be installed as shown in Appendix A, Figure 10 and shall comply with Section 26 of this regulation.

4. The toilet paper dispenser shall be installed within reach as shown in Appendix A, Figure 10.

(c) Lavatory, mirrors, and medicine cabinets:

1. The lavatory and mirrors shall comply with Section 19 of this regulation.

2. If a medicine cabinet is provided above the lavatory, then the bottom of the medicine cabinet shall be located with a usable shelf no higher than forty-four (44) inches above the floor.

(d) Bathtubs. If a bathtub is provided, then it shall have the following features:

1. Floor space. Clear floor space at bathtubs shall be as shown in Appendix A, Figure 13.

2. Seat. An in-tub seat or a seat at the head end of the tub shall be provided as shown in Appendix A, Figures 13 and 14. The structural strength of seats and their attachments shall comply with Section 26(3) of this regulation. Seats shall be mounted securely and shall not slip during use.

3. Grab bars. Grab bars shall be installed as shown in Appendix A, Figure 14 and shall comply with Section 26 of this regulation.

4. Controls. Faucets and other controls shall be located as shown in Appendix A, Figure 14 and shall comply with Section 27(4) of this regulation. Single lever and mixing devices are acceptable designs.

5. Shower unit. A shower spray unit with a hose at least sixty (60) inches long that can be used as a fixed shower head at various heights or as a hand-held shower shall be provided.

(e) Showers. If a shower is provided, it shall have the following features:

1. Size and clearances. Shower stall size and clear floor space shall comply with Appendix A, Figure 15.

2. Seat. A seat shall be provided in the transfer shower stalls as shown in Appendix A, Figure 16. The seat shall be seventeen (17) inches to nineteen (19) inches high measured from the bathroom floor and shall extend the full depth of the stall. The seat shall be on the wall opposite the controls. The structural strength of seats and their attachments shall comply with Section 26(3) of this regulation. Seats shall be mounted securely and shall not slip during use.

3. Grab bars. Grab bars complying with Section 26 of this regulation shall be provided as shown in Appendix A, Figure 17.

4. Controls. Faucets and other controls shall be located as shown in Appendix A, Figure 17 and shall comply with Section 27(4) of this regulation. In transfer shower stalls, all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.

5. Shower unit. A shower spray unit with a hose at least sixty (60) inches long that can be used as a fixed shower head at various heights or as a hand-held shower shall be provided.

(f) Bathtub and shower enclosures. Enclosures for bathtubs or shower stalls shall not obstruct controls or transfer from wheelchairs onto shower or bathtub seats. Enclosures on bathtubs shall not have tracks mounted on their rims.

(g) Clear floor space. Clear floor space at fixtures may overlap.

(5) Kitchens. Kitchens and their components

shall be on an accessible route and shall comply with the requirements of this subsection.

(a) Clearance. Clearances between all opposing base cabinets, counter tops, appliances or walls shall accommodate wheelchair turning space in accordance with Section 4(3) of this regulation.

(b) Clear floor space. A clear floor space at least thirty (30) inches by forty-eight (48) inches complying with Section 4(4) of this regulation that allows either a forward or a parallel approach by a person in a wheelchair shall be provided at all appliances in the kitchen, including the range or cooktop, oven, refrigerator/freezer, dishwasher, and trash compactor. Laundry equipment located in the kitchen shall comply with subsection (6) of this section.

(c) Controls. All controls in kitchens shall comply with Section 27 of this regulation.

(d) Work surfaces. At least one (1) thirty (30) inch section of counter shall provide a work surface that complies with the following requirements:

1. The counter either shall be adjustable (or replaceable as a unit) to provide alternative heights of twenty-eight (28) inches to thirty-six (36) inches, or shall be fixed at thirty (30) inches measured from the floor to the top of the counter surface.

2. Base cabinets, if provided, shall be removable under the full thirty (30) inch minimum frontage of the counter. The finished floor shall extend under the counter to the wall.

3. Counter thickness and supporting structure shall be two (2) inches maximum over the required clear area.

4. A clear floor space thirty (30) inches by forty-eight (48) inches shall allow a forward approach to the counter. Nineteen (19) inches maximum of the clear floor space may extend underneath the counter. The knee space shall have a minimum clear width of thirty (30) inches and a minimum clear depth of nineteen (19) inches.

5. There shall be no sharp or abrasive surfaces under such counters.

(e) Sink. The sink and surrounding counter shall comply with the following requirements:

1. The sink and surrounding counter either shall be adjustable (or replaceable as a unit) to provide alternative heights of twenty-eight (28) inches to thirty-six (36) inches, or shall be fixed at thirty (30) inches measured from the floor to the top of the counter surface or sink rim. The total width of sink and counter area shall be thirty (30) inches minimum.

2. Where the sink is adjustable, rough-in plumbing shall be located to accept connections of supply and drain pipes for sinks mounted at the height of twenty-eight (28) inches.

3. The depth of a sink bowl shall be no greater than six and one-half (6 1/2) inches.

4. Faucets shall comply with Section 27(4) of this regulation. Lever-operated or push-type mechanisms are two (2) acceptable designs.

5. Base cabinets, where provided, shall be removable under the full thirty (30) inch minimum frontage of the sink and surrounding counter. The finished flooring shall extend under the counter to the wall.

6. Counter thickness and supporting structure shall be two (2) inches maximum over the required clear space.

7. A clear floor space thirty (30) inches by forty-eight (48) inches shall allow forward

approach to the sink. Nineteen (19) inches maximum of the clear floor space may extend underneath the sink. The knee space shall have a minimum clear width of thirty (30) inches and a clear depth of nineteen (19) inches.

8. There shall be no sharp or abrasive surfaces under sinks. If hot water exceeds 120 degrees Fahrenheit, hot water and drain pipes under sinks shall be insulated or otherwise covered.

(f) Ranges and cooktops. Ranges and cooktops shall comply with subsection (5)(b) of this section and Section 27 of this regulation. If ovens or cooktops have knee spaces underneath, then they shall be insulated or otherwise protected on the exposed contact surfaces to prevent burns, abrasions, or electrical shock. The clear floor space may overlap the knee space, if provided, by nineteen (19) inches maximum. The location of controls for ranges and cooktops shall not require reaching across burners.

(g) Ovens. Ovens shall comply with subsection (5)(b) of this section and Section 27 of this regulation. Ovens shall be of the self-cleaning type or be located adjacent to a counter with knee space below. For side-opening ovens, the door latch side shall be next to the open counter space, and there shall be a pullout shelf under the oven extending the full width of the oven and pulling out not less than ten (10) inches when fully extended. Ovens shall have controls on front panels; they may be located on either side of the door.

(h) Refrigerator/freezers. Refrigerator/freezer type shall comply with Section 27 of this regulation. Refrigerators shall be:

1. Of the vertical side-by-side refrigerator/freezer type; or

2. Of the over-and-under type and meet the following requirements:

a. Have at least fifty (50) percent of the freezer space below fifty-four (54) inches above the floor.

b. Have 100 percent of the refrigerator space and controls below fifty-four (54) inches. Freezers with less than 100 percent of the storage volume within the limits specified in subsections (5) or (6) of this section shall be the self-defrosting type.

(i) Dishwashers. Dishwashers shall comply with subsection (5)(b) of this section and Section 27 of this regulation. Dishwashers shall have all rack space accessible from the front of the machine for loading and unloading dishes.

(j) Kitchen storage. At least fifty (50) percent of kitchen storage areas shall comply with Section 25 of this regulation. Door pulls or handles for wall cabinets shall be mounted as close to the bottom of cabinet doors as possible. Door pulls or handles for base cabinets shall be mounted as close to the top of cabinet doors as possible.

(6) Laundry facilities. If laundry equipment is provided within individual accessible dwelling units, or if separate laundry facilities serve one (1) or more accessible dwelling units, then they shall meet the requirements of this subsection.

(a) Location. Laundry facilities and laundry equipment shall be on an accessible route.

(b) Washing machines and clothes dryers. Washing machines and clothes dryers in common-use laundry rooms shall be front loading.

(c) Controls. Laundry equipment shall comply with Section 27 of this regulation.

(See Appendix A in Volume 6 of the 1989 Kentucky Administrative Regulations)

CHARLES A. COTTON, Commissioner

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: October 5, 1989

FILED WITH LRC: October 11, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on November 21, 1989 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by November 16, 1989, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

*Because these amendments are made at the request of the Subcommittee on Cities and there are no substantive changes, the answer to the above questions is "none".

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

PUBLIC PROTECTION & REGULATION CABINET Department of Housing, Buildings & Construction Division of Plumbing (Proposed Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS Chapter 13A, 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation will allow the department to permit the use of new parts and materials without amending specific regulations for each new item. This regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment adds one (1) new product approved by the Plumbing Code Committee on June 21 [March 8, 1989, as well as delete two (2) products related to subsurface sewage systems which this department no longer regulates. Also in this amendment some minor typographical errors were corrected].

Section 1. Definitions as used in this regulation. (1) "APML" shall mean the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" shall mean all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" shall mean the State Plumbing Code Committee.

(6) "Code" shall mean the State Plumbing Code.

(7) "Department" shall mean the Department of Housing, Buildings and Construction.

(8) "Person" shall mean any individual, public or private corporation, political subdivision, government agency, municipality, copartnership, association, firm, trust, estate, or other entity whatsoever.

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). The use of any part or material in any drainage or plumbing system or section thereof, other than those currently authorized by the code, is prohibited unless the use of such part or material has been considered by the committee and approved by the department as being equal to or better than other similar approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person desiring to have the APML amended shall petition, in writing, for an opportunity to be heard by the committee no later than fourteen (14) days prior to the next scheduled meeting of the committee. Such request shall include a description of the part or material for which approval is sought, available technical data, and a listing of other authorities which have the use of the part or material, and any other pertinent information requested by the committee.

(2) The committee will consider all parts or

materials for which approval is sought and will forward thirty (30) days thereafter its recommended disposition to the department. Provided, however, that a hearing will be held before the committee if requested, within thirty (30) days following the determination of the committee, by a person having an interest in the subject matter. Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this regulation.

Section 4. Custody of the APML. It shall be the responsibility of the Director, Division of Plumbing, to maintain an up-to-date APML and to make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin must be constructed of polyethylene material and be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Drain pump and HiLo Industries Power Drain for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainsaur Water Removal System, Model #WRS-6. This approval is limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene

roof flashing shall have a base which will extend six (6) inches in all directions from the base of a stack and shall have a boot with a performed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping provided the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground must be laid on six (6) inches of sand grillage. May be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-sink-erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA.

2. Thermar Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and must be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and must be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water

Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and must be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and must be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and must be equipped with an approved temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and must be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and must be equipped with an approved temperature and pressure relief valve.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material must be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which will be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being

more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) ARMC0 A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; must have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: September 27, 1989

FILED WITH LRC: October 2, 1989 at 2 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on November 21, 1989 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by November 16, 1989, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky

Plumbing Code.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings because the regulation only establishes acceptability of previously unapproved products. Provides ability of manufacturer to market his product in state.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): Enhances competition for products in state.

(b) Reporting and paperwork requirements: The paperwork requirements and recordkeeping needs remain the same; no costs or savings involved.

(2) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight, the procedures for acceptability of new products in the State Plumbing Code.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Unchanged by this amendment.

(3) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This is the only known law or policy dealing with this product.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 13A.120, 198B.040(10), 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it. This amendment gives an alternative to discharge relief valves from water heaters to other than floor drains or to outside of building as outlined in Section 14.

Section 1. Definition of Terms. (1) ASSE - American Society of Sanitary Engineers.

(2) ASTM - American Society for Testing Materials.

(3) Critical level (CL) - the level to which

the vacuum breaker may be submerged before backflow will occur. Where CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) DWV - drain, waste and vent piping.

(5) SDR - standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the regulations of the department and other governing authorities. Toxic materials shall be kept out of the potable water system.

(a) Piping conveying, and all surfaces in contact with potable water shall be constructed of nontoxic materials.

(b) Chemicals or other substances that could produce either toxic conditions, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, such systems.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with any material which will affect either the taste, odor, color, or potability of the water supply when the tank is placed in, or returned to, service. All interior tank coatings shall be from the list approved by the authority having jurisdiction.

(2) Potable water only shall be accessible to plumbing fixtures that supply water for drinking, bathing, culinary use or the processing of medicinal, pharmaceutical or food products.

(3) The potable water supply system shall be designed, installed, and maintained in such manner as to prevent contamination from nonpotable liquids, solids, or gases being introduced into the potable water supply through cross connections or any other piping connections to the system.

(4) Cross connections shall be prohibited except when and where, as approved by the authority having jurisdiction, suitable protective devices are installed.

(5) Cross connections between a private water supply and a public water supply shall not be made.

(6) When cross connection control devices are properly installed, they create a closed water system. A properly sized thermal expansion tank shall be installed in the cold water supply located as near the water heater as possible.

(7) Backflow and back siphonage protection. Means of protection against backflow shall be as required in paragraphs (a) through (l) of this subsection [the following sections: 1, 7A through 7L] in order of degree of protection provided. Backflow includes both back pressure and back siphonage.

(a) Air gap. Provides the best level of protection in all backflow situations. Minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be twice the effective opening of a potable water outlet, unless the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, in which case the minimum required air gap shall be three (3) times the effective opening of the outlet. The minimum required air gap shall not be less than shown in the following table -

Minimum Air Gaps for Plumbing Fixtures.

MINIMUM AIR GAPS FOR PLUMBING FIXTURES

Fixture	Minimum Air Gap	
	When not affected by near wall	When affected by near wall
Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter	1	1 1/2
Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter	1 1/2	2 1/4
Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter	2	3
Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)	1	1 1/2
Effective openings greater than 1 inch	2 x diameter of effective opening	3 x diameter of effective opening

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps when spaced from inside edge of spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap when spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more such vertical walls or ribs has not been determined. In such cases, the air gap shall be measured from the top of the wall.

(b) Reduced pressure principle back pressure backflow preventer. Reduced pressure principle back pressure backflow preventers provide the best mechanical protection against backflow available, and may be considered equivalent to an air gap in most situations.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions only. These devices are manufactured assemblies consisting of two (2) independently acting check valves and including shutoff valves at each end, and petcocks and test gauges for

testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions only.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions only. When applicable, all atmospheric type vacuum breakers shall be installed after the last cutoff valve on the water line. These devices may operate under normal atmospheric pressure when the critical level (CL) is installed at the required height in accordance with the following table:

CRITICAL LEVEL (CL) SETTINGS
FOR ATMOSPHERIC TYPE VACUUM BREAKERS

Fixture or Equipment	Method of Installation
Aspirators, ejectors, and showers	CL at least 6 in. above flood level of receptacle
Bidets	CL at least 6 in. above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
Dental units	On models without built-in vacuum breakers: CL at least 6 in. above flood level rim of bowl.
Dishwashing machines	CL at least 6 in. above flood level of machine
Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line
Laundry machines	CL at least 6 in. above flood level of machine
Lawn sprinklers	CL at least 12 in. above highest sprinkler or discharge outlet
Steam tables	CL at least 12 in. above flood level
Tanks & vats	CL at least 6 in. above flood level rim or line

NOTE 1. Critical level (CL) is defined as the level to which the vacuum breaker may be submerged before backflow will occur. Where CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(f) Barometric loop: applicable only to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. Backflow and back siphonage preventers shall be in an accessible location,

preferable in the same room as the fixture or connection they protect. Devices may be installed in utility or service spaces. Devices and air gaps shall not be subject to flooding or freezing.

(h) Inspection of devices. Periodic inspections shall be made of all backflow and back siphonage preventers to determine whether they are in proper working condition. Reduced pressure principle back pressure backflow preventers shall be tested on at least an annual basis. Records shall be kept on all such inspections.

(i) Approval of devices. Before any device for the prevention of backflow or back siphonage is installed, it shall have first been certified by a recognized testing laboratory acceptable to the plumbing official. Devices installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person or persons responsible for the maintenance of the system.

(j) Protection of potable water system. All potable water openings, outlets, and

connections, except those serving residential units, shall be protected against backflow in accordance with one (1) of the following paragraphs, (a) through (l) of this subsection [sections, 1(7A) through 1(7L)].

(k) Degree of hazard. The protection required at any given outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard. Potential for contamination by toxic substances or disease-causing organisms.

2. Moderate hazard. Potential for contamination by nontoxic but objectionable substances.

3. Minor hazard. Potential for contamination by generally nontoxic, nonobjectionable substances, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. All openings and outlets shall be protected by an air gap between the opening and floor level rim whenever possible. The acceptable protection for various types of outlets or connections shall be as shown in the following table:

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

Type of Connection	Degree of Hazard			Acceptable Protection				
	Severe	Moderate	Minor	Air Gap	Reduced Pressure Device	Backflow	Pressure Type Vacuum Breaker	Back siphonage
						Double Check Valve Assembly		Atmospheric Type Vacuum Breaker
I. Connections subject to back pressure from:								
A. Pumps, tanks, and lines handling:								
1. Toxic substance	X			X	X			
2. Nontoxic subst.		X		X	X	X		
B. Boilers								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		
C. Gravity due to obvious site conditions subject to:								
1. Contamination by toxic substances	X			X	X			
2. Contamination by nontoxic subst.		X		X	X	X		
II. Water outlets and connections not subject to back pressure:								
A. Connection to sewer or sewage pump	X			X				
B. Outlet to receptacles containing toxic substances	X			X	X		X	X
C. Outlet to receptacles containing nontoxic substances		X		X	X	X	X	X
D. Outlet into domestic water tanks			X					
E. Flush valve toilets	X			X	X		X	X
F. Flush valve urinals		X		X	X		X	X

Each case treated separately

G. Outlets with hose attachments subject to contamination from:

- | | | | | | | | |
|---------------------|---|---|---|---|---|---|---|
| 1. Toxic substances | X | | X | X | | X | X |
| 2. Nontoxic subst. | | X | X | X | X | X | X |

H. Outlets to recirculating cooling tower:

- | | | | | | | | |
|-------------------------------|---|---|---|---|---|--|--|
| 1. With chemical additives | X | | X | X | | | |
| 2. Without chemical additives | | X | X | X | X | | |

APPLICATION CHART

TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS	APPLICABLE STANDARDS
Reduced Pressure Principle Backflow Preventer For high hazard cross connections.	Two independent check valves with intermediate relief valve. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to backpressure or back siphonage where there is a high potential health hazard from contamination. Continuous pressure.	Main Supply Lines Commercial Boilers Cooling Towers Hospital Equipment Processing Tanks Laboratory Equipment Waste Digesters Car Wash Sewerage Treatment	A.S.S.E. No. 1013 A.W.W.A. C506 FCCCHR of U.S.C. CSA B.64.4 Sizes 3/4" - 10"
(A) Double Check Valve Assembly For low hazard cross connections.	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to back pressure where there is a low potential health hazard or nuisance. Continuous pressure.	Main Supply Lines Food Cookers Tanks and Vats Lawn Sprinklers Fire Sprinkler Lines Commercial Pools	A.S.S.E. No. 1015 A.W.W.A. C506 FCCCHR of U.S.C. CSA B.64.5 N Sizes 3/4" - 10"
(B) Dual Check Valve Backflow Preventer For low hazard applications.	Two independent check valves. Checks are removable for testing.	Cross connections where there is a low potential health hazard and moderate flow requirements.	Post ground hydrants.	O N A.S.S.E. No. 1024 T Sizes 3/4" & 1" O X I C
(A) Backflow Preventer with Intermediate Atmospheric Vent For moderate hazard cross connections in small pipe sizes.	Two independent check valves with intermediate vacuum breaker and relief valve.	Cross connections subject to back pressure or back siphonage where there is a moderate health hazard. Continuous pressure. Pump outlet to prevent backflow to carbon dioxide gas and carbonated water into the water supply system to beverage machines.	Boilers (Small) Cooling Towers (Small) Dairy Equipment Residential Postmix Carbonated Beverage Machine	A.S.S.E. No. 1012 CSA B.64.3 Sizes 1/2" & 3/4" Special Approvals
(B) Laboratory Faucet and Double Check Valve with Intermediate Vacuum Breaker In small pipe sizes for moderate to low hazard.	Two independent check valves with intermediate vacuum breaker and relief vent.	Cross connection subject to back pressure or back siphonage where there is a moderate to low health hazard.	Laboratory Faucets and Pipe Lines Barber Shop and Beauty Parlor Sinks	A.S.S.E. No. 1035 (N-LF9)

(A) Atmospheric Vacuum Breakers For moderate to high hazard cross connections.	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install at least 6" above fixture rim. Protection against back siphonage only.	Process Tanks Dishwashers Soap Dispensers Washing Machines Lawn Sprinklers	A.S.S.E. No. 1001 ANSI.A112.1.1 CSA B.64.1.1 FCCCHR of U.S.C. Sizes 1/4" - 3"
(B) Antisiphon Pressure Breakers For moderate to high hazard cross connections.	Spring loaded single float and disc with independent 1st check. Supplied with shutoff valves and ball type test cocks.	This valve is designed for installation in a continuous pressure potable water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	Laboratory Equipment Cooling Towers Comm. Laundry Machines Swimming Pools Commercial Plating Tanks Lg. Total & Urinal Facilities Degreasers, Photo Tanks Livestock Water Systems Lawn Sprinklers	A.S.S.E. No. 1020 CSA B.64.1.2 FCCCHR of U.S.C. Sizes 1/2" - 2"
(C) Hose Connection Vacuum Breakers For residential and industrial hose supply outlets.	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Hose Bibs Service Sinks Hydrants	A.S.S.E. No. 1011 CSA B.64.2 Size 3/4" Hose

Section 3. Water Required. (1) Every building equipped with plumbing fixtures and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In buildings used as residences or buildings in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to any building shall be not less than three-fourths (3/4) inch nominal pipe size but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures on all floors at all times.

(2) The underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth except they can be placed in the same trench provided:

(a) The bottom of the water service pipe at all points shall be at least eighteen (18) inches above the top of the sewer at its highest point.

(b) The water service pipe shall be placed on a solid shelf excavated at one (1) side of the common trench.

(c) The number of joints in the water service pipe shall be kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of any other piping system.

(2) Piping which has been used for any other purpose than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing water closets and urinals, provided such water shall be piped in an independent system.

(a) When a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified by color markings and metal tags, or other appropriate method as may be approved by the governing authority. Each outlet on the nonpotable water distribution system which might be used for drinking or domestic purposes shall be

permanently posted: DANGER - UNSAFE WATER. Each branch, fitting or valve shall be identified by the word - "NONPOTABLE WATER" either by signs or brass tags that are permanently affixed to the pipe, fittings, valves, etc. These identification markings shall not be concealed. Their maintenance shall be the responsibility of the owner.

(4) Any backflow device or cross-connection control device shall be approved by the department.

(5) Combination stop and waste valves, cocks, or hydrants shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) No private water supply shall be interconnected with any public water supply.

(7) Water used for cooling of equipment or in other processes shall not be returned to the potable water system. Such water shall be discharged into a drainage system through an air gap, or may be used for nonpotable purposes on written approval of the plumbing official.

Section 6. Water Supply to Fixtures. Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. Every water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of water closets, urinals or similar fixtures. When a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, such valves shall be set above the fixture in a manner so as to prevent any possibility of polluting the potable water supply by back siphonage. All such fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that will prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 7. Connections to Boilers. Potable water connections to boiler feed water systems

in which boiler conditioning chemicals are introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where such chemicals are introduced. Boilers shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent any contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. No two and one-half (2 1/2) inch fixture branches are supplied from any one-half (1/2) inch pipe. (EXCEPTION: A combination of two (2) of the following fixtures may be connected utilizing the one-half (1/2) inch branch: a flush tank water closet, a lavatory or drinking fountain.)

(2) The following schedule shall be used for sizing the water supply piping to fixtures. The branch pipe to any fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and in every instance shall be brought to the floor or wall adjacent to the fixture. No concealed water branch pipe shall be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cuspidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res.)	1/2
Kitchen sink (com.)	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4
Urinal (flush tank)	1/2
Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type)	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In all building supply systems in which devices or appurtenances are installed utilizing quick acting valves that cause noises due to water hammer, protective devices such as air chambers or approved mechanical shock absorbers shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) Where mechanical shock absorbers are installed, they shall be in an accessible place.

(b) Where mechanical devices are used, the manufacturers specifications shall be followed as

to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing conforming to ASTM B-586-73, fusion welded copper tubing conforming to ASTM B-447-72 and ASTM B-251, DWV welded brass tubing conforming to ASTM B-587-73, seamless stainless steel tubing, Grade H conforming to ASTM A-268-68, filament-wound reinforced thermosetting resin pipe conforming to ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold). Polyethylene (PE) plastic pipe conforming to ASTM D-2239-69, Poly(vinyl chloride) (PVC) plastic pipe conforming to ASTM D-1785-69, Chlorinated Poly(vinyl chloride) (CPVC) plastic pipe conforming to ASTM D-2846-70, Poly(vinyl chloride) (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 conforming to ASTM D-2241-84, polybutylene (PB) plastic pipe conforming to ASTM-D-3309-85b with brass, copper or celcon fittings, Quikcite connection using a celcon asetal copolymer, polybutylene cone and stainless steel ring, plastic pipe and fittings shall bear the NSF seal of approval. (EXCEPTION: Polybutylene pipe utilizing insert fittings of brass, copper or celcon shall use only copper clamping rings. Its use between the diverter spout of a tub and the shower nozzle is prohibited.) Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall conform to ASTM-D-3309-85b, and polybutylene plastic pipe conforming to ASTM 2662 for cold water applications only. Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system. All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or machine drawn. When Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or when it passes through a concrete floor it shall be wrapped with an approved material that will permit expansion or contraction. In no instance shall Polyethylene, PVC or CPVC be used below ground under any house or building (refer also to 815 KAR 20:060[, Section 19] and 815 KAR 20:073).

Section 11. Temperature and Pressure Control Devices for Shower Installations. Temperature and pressure control devices shall be installed on all shower installations that will maintain an even temperature and pressure and will provide nonscald protection. Such devices shall be installed on all installations other than in homes or apartment complexes.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be accessible and provided with a drip or drain valve. A pit or similar type installation

is prohibited for a potable water supply shutoff valve.

(2) Pressure on gravity tanks shall have their supply lines valved at or near their source.

(3) Each family unit in a two (2) family or multifamily dwelling shall have each family unit controlled by an arrangement of shutoff valves which will permit each unit to be shutoff without interfering with the cold water supply to any other family unit or portion of the building.

(4) In all buildings other than dwellings, shutoff valves shall be installed which permit the water supply to each piece of equipment to be isolated without interference with the supply to other equipment.

(5) Each fixture or group of bath fixtures shall be valved and each lawn sprinkler opening shall be valved. In residential construction all fixtures except bathtub and showers shall be valved individually or in lieu each group of fixtures shall be valved.

(6) A group of fixtures or fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back to back on a common wall.

(7) The cold water branch to each hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and only serving this equipment.

Section 13. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water services shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. When a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor; when a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. The relief device may also discharge through an air gap to a sump basin, service sink, open receptacle or any other point of discharge in which equivalent safety is provided as approved by the Division of Plumbing. Relief devices shall be installed on a pneumatic water system (see Section 17).

Section 15. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. Such approval shall be obtained before an installation is made.

Section 16. Domestic Solar Water Heaters. Domestic solar water heaters may have a "single wall heat exchanger" provided the solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or equal, and that the heat exchanger is pretested by the manufacturer to 450 PSI and that the water

heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times and that a pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater. Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided. The water inlet to the heat exchange vessel shall be provided with a check valve, and adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) PSI above the maximum water pressure at the point of installation shall be provided if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device. Condensate drain water shall be piped in accordance to the plumbing code and in no instance shall it be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in areas subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats, below Rim Supply. Tanks and vats with potable water supply below the rim shall be subject to the following requirements:

(1) Where a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible.

SIZES FOR OVERFLOW PIPES FOR WATER SUPPLY TANKS

Maximum capacity of water supply line to tank	Diameter of overflow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of overflow pipe (inches ID)
0- 50 gpm	2	400- 700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200 gpm	3	Over 1000 gpm	8

(2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet closed.

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. When a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees

Fahrenheit. It shall utilize not less than three-fourths (3/4) inch Type M copper in its piping and its run shall not exceed 140 feet between the water heater and the heating unit (relates to 815 KAR 20:070).

Section 20. Fire Protection Systems. Fire protection systems using water from the potable water distribution system inside of buildings present special cross-connection prevention problems that require the use of protective devices. The devices used to connect such situations shall be of the double check valve assembly as outlined in part 2 or 3 of the application chart.

Section 21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home conforming to the regulations of the department.

(2) All materials, including pipes and fittings used for connections shall conform with the other sections of this code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space. The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded so as to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or equal with the intervening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather. A shutoff valve may be placed below the frost depth on the water service line, but in no instance shall this valve be a stop-and-waste cock.

Section 22. Conservation of Water (refer to 815 KAR 20:070[, Section 14]).

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: August 17, 1989

FILED WITH LRC: October 11, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on November 21, 1989 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by November 16, 1989, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Kentucky master & journeyman plumbers.

(a) Direct and indirect costs or savings to those affected: Could decrease cost for approximately 5% of new construction projects & approximately 25% of water heater replace.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): State Plumbing Code enforced statewide; no competition.

(b) Reporting and paperwork requirements: Proposed amendment would create none.

(2) Effects on the promulgating administrative body: Updating State Plumbing Code and distributing amendments to users.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were rejected; State Plumbing Code and Board of Housing review proposed amendments and accept on basis of acceptability within limits defined.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This amendment offers an alternative to discharge relief valves from water heaters.

TIERING: Was tiering applied? Yes.

PUBLIC PROTECTION & REGULATION CABINET Department of Housing, Buildings & Construction Division of Plumbing (Proposed Amendment)

815 KAR 20:130. House sewers and storm water piping; methods of installation.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KAR 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to outlining the materials that may be used in the construction of house sewers, storm water piping as well as the methods of installation. This amendment approves a new type of material for house sewers or combined sewers in Section 7.

Section 1. Independent System. The drainage and plumbing system of each new building and of new work installed in an existing building shall be separate from, and independent of, that of any other building except as provided below, and every building shall have an independent

connection with either a public or private sewer or sewer system.

Section 2. Exception. Where a building stands in the rear of another building or on an interior lot, and a sewer connection cannot be made available to the rear building through an adjoining alley, court, yard or driveway, the sewer from the front building may be extended to the rear building and it will be considered as one (1) sewer. This exception does not apply to corner lots where a sewer connection is available from the street or alley nor to a new or existing building which abuts a street or alley.

Section 3. Connection with Private Sewage Disposal System. When a sewer is not available, the house drain from a building shall connect with an approved private sewage disposal system.

Section 4. Excavations. All excavations made for the installations of a house sewer shall be open trench work. All such trenches shall be kept open until the piping has been inspected and/or tested and approved.

Section 5. Depth of Sewer at the Property Line. (1) Where possible the sewer at the property line shall be at a sufficient depth to properly serve any plumbing connection that may be installed in the basement of any building unless restricted by another's authority.

(2) House sewers shall be laid on a grade of not less than one-eighth (1/8) inch nor more than one-fourth (1/4) inch per foot. All sewers must have at least an eighteen (18) inch cover. Sewer piping under a superimposed load condition shall have at least three (3) feet cover unless constructed of cast iron piping. Unless there is a three (3) foot cover provided, other piping shall be encased in a minimum of six (6) inches of concrete on all sides and the top. Sewers shall be backfilled by hand and tamped six (6) inches above the piping, or in lieu thereof may be filled with six (6) inches grillage above the piping. All joints in cast iron and vitrified clay pipe shall be made in a manner to conform to other sections of this code.

(3) For purposes of this section, "superimposed load" means to lay over, put on, stack over or subject to vehicular traffic.

Section 6. New House Sewer Connections. House sewers installed where a private sewerage system has been discarded may connect to the house drain, provided in the opinion of the department the existing plumbing system meets this code or a previous one.

Section 7. Materials for House Sewers. House sewers or combined sewers, beginning two (2) feet outside the foundation wall of a building shall be made of either extra heavy cast iron pipe, service weight cast iron, aluminum, vitrified clay, concrete, PVC or ABS plastic pipe schedules 40 and 80 and cellular core PVC conforming to ASTM F-891, truss pipe and extra heavy SDR 35 pipe and Type PS-46, Poly(Vinyl

Chloride) (PVC) in sizes four (4) inches through fifteen (15) inches conforming to ASTM F 789-82.

Section 8. Material for Storm Sewers Inside Buildings. Material for storm sewers inside of buildings to a point two (2) feet outside a building in sizes eight (8) inches and smaller shall be cast iron pipe, aluminum or Schedule 40 ABS or PVC DWV pipe. Storm sewers in sizes of ten (10) inches and larger may be either cast iron, aluminum, vitrified clay or concrete conforming to appropriate commercial standards with approved joints.

Section 9. Change of Direction. Change in direction of a sewer shall be made with long curves, one-eighth (1/8) bends or Y's.

Section 10. Size of House Sewers and Horizontal Branches. The minimum size of a house sewer shall not be less than four (4) inches nor less than that of the house drain. House sewers receiving branches shall be sized in the same manner as house drains (see 815 KAR 20:090).

Section 11. Size of Storm Systems. The required sizes of storm sewers shall be determined on the basis of the total drained areas in horizontal projection in accordance with the following table. No storm sewer shall be laid parallel to or within two (2) feet of any bearing wall. The storm sewer shall be laid at a sufficient depth to protect it from freezing.

Diameter of pipe - inches	Maximum drained roof area square feet*	
	Slope 1/8 in. fall to 1 ft.	Slope 1/4 in. fall to 1 ft.
3		1,160
4	1,880	2,650
5	3,340	4,720
6	5,350	7,550
8	11,500	16,300
10	20,700	29,200
12	33,300	47,000
15	59,500	84,000

*The calculations in this table are based on a rate of rainfall of four (4) inches per hour.

Section 12. Combined Storm and Sanitary Sewer System. Whenever a combined sewer system is used, the required size of the house drain or house sewer shall be determined by multiplying the total number of fixture units carried by the drain or sewer by the conversion factor corresponding to the drained area and the total fixture units, adding the product to the drained area and applying the sum of the preceding table for storm water sewers. No combined house drain or house sewer shall be less than five (5) inches in diameter, and no combined house drain or house sewer shall be smaller in size than that required for the same number of fixture units or for the same roof area in separate systems.

CONVERSION FACTORS FOR COMBINED STORM
AND SANITARY SYSTEM

Number of fixture units on sanitary system

Drained roof area in square feet	Up to	7 to	19 to	37 to	61 to	97 to	145 to	217 to
	6	18	36	60	96	144	216	324
Up to 120	180	105	60	45	30	22	18	15
121 to 240	160	98	57	43	29	21	17.6	14.7
241 to 480	120	75	50	39	27	20	16.9	14.3
481 to 720	75	62	42	35	24	18	15.4	13.2
721 to 1,080	54	42	33	29	20	15	13.6	12.1
1,081 to 1,620	30	18	16	15	12	11.5	11.1	10.4
1,621 to 2,430	15	12	11	10.5	9.1	8.8	8.6	8.3
2,431 to 3,645	7.5	7.2	7.0	6.9	6.6	6.5	6.4	6.3
3,646 to 5,460	2.0	2.4	3.0	3.3	4.1	4.2	4.3	4.4
5,461 to 8,190	0	2.0	2.1	2.2	2.3	2.4	2.5	2.6
8,191 to 12,285	0	0	2.0	2.1	2.1	2.2	2.3	2.3
12,286 to 18,420	0	0	0	2.1	2.1	2.1	2.2	2.2
18,421 to 27,630	0	0	0	0	2.0	2.1	2.2	2.2
27,631 to 40,945	0	0	0	0	0	2.0	2.1	2.2
40,946 to 61,520	0	0	0	0	0	0	2.0	2.1
Over 61,520	0	0	0	0	0	0	0	2.0

Number of fixture units on sanitary system

Drained roof area in square feet	325 to	487 to	733 to	1,099 to	1,645 to	2,467 to	3,703 to	Over
	486	732	1,098	1,644	2,466	3,702	5,556	5,556
Up to 120	12	10.2	9.2	8.4	8.2	8.0	7.9	7.8
121 to 240	11.8	9.9	9.1	8.3	8.1	8.0	7.9	7.8
241 to 480	11.5	9.7	8.8	8.2	8.0	7.9	7.8	7.7
481 to 720	10.8	9.2	8.6	8.1	7.9	7.9	7.8	7.7
721 to 1,080	10.1	8.7	8.3	8.0	7.8	7.8	7.7	7.6
1,081 to 1,620	9.8	8.4	8.1	7.9	7.7	7.7	7.6	7.5
1,621 to 2,430	8.0	7.9	7.8	7.7	7.6	7.5	7.4	7.4
2,431 to 3,645	6.2	6.3	6.4	6.4	6.8	7.0	7.1	7.2
3,646 to 5,460	4.5	4.7	5.0	5.1	6.1	6.4	6.9	6.9
5,461 to 8,190	2.8	3.2	3.7	4.6	5.0	5.6	6.2	6.4
8,191 to 12,285	2.4	2.5	2.6	2.7	3.5	4.5	5.2	5.6
12,286 to 18,420	2.3	2.3	2.4	2.4	2.6	3.2	4.2	4.7
18,421 to 27,630	2.2	2.3	2.3	2.3	2.4	2.5	2.8	3.1
27,631 to 40,945	2.2	2.2	2.2	2.2	2.2	2.2	2.3	2.4
40,946 to 61,520	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Over 61,520	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

Section 13. House Sewer in Undisturbed or Made Ground. House sewers laid in undisturbed ground must be laid on at least four (4) inches of pea gravel, sand or other approved grillage. House sewers laid in made or filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert, or other support that may be approved by the department. Supports in filled or made ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock. House sewers constructed of flexible thermoplastic sewer piping must be installed with at least six (6) inches of gravel on the bottom, top and sides of the piping.

Section 14. Storm Sewers in Undisturbed or Made Ground. Storm sewers laid in undisturbed ground will not require grillage. Storm sewers laid in made or filled grounds shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert or other support that may be approved by the department. Supports in filled or made ground shall be on ten (10) feet centers to a solid footing, either undisturbed earth or rock.

Section 15. Drainage Below Sewer Level. In buildings, in which the whole or part of the house drain and plumbing system thereof lies below the level of the main sewer, sewage and waste shall be lifted by an approved artificial means and discharged into the house sewer.

Section 16. Drainage Below Sewer Level (Residential). In homes where the house sewer level is above the basement floor, waste water shall be lifted by means of an approved sump pump. The sump pit shall be constructed of either poured or precast concrete, approved fiberglass or polyethylene material with a tight fitting cover. The sump pit shall be provided with a two (2) inch vent which may also act as a waste and vent for a laundry tray. The pump discharge piping shall discharge into a two (2) inch waste pipe extended inside the building to a height at least twelve (12) inches above the outside grade. The sump well shall be provided with a tight-fitting concrete cover. On the outside of the building this waste piping shall connect into a four (4) inch by two (2) inch sanitary tee which shall connect into a four (4) inch P trap and then into the sanitary sewer. The four (4) inch by two (2) inch sanitary tee shall be extended at least two (2) inches above the finished grade and shall be provided with a ventilated cap.

Section 17. Sumps and Receiving Tanks. All subsoil drains shall discharge into an air tight sump or receiving tank so located as to receive the sewage by gravity. The sewage shall be lifted and discharged into the house sewer by a pump, ejector or any equally efficient method. Such sumps shall automatically discharge.

Section 18. Ejectors, Vented. All ejectors shall be vented with a three (3) inch vent. Fixtures or appliances connected thereto shall be vented in accordance with other sections of this code.

Section 19. Ejector Power: Motors, Compressors, Etc. All motors, air compressors and air tanks shall be located where they are

open for inspection and repair at all times. The air tanks shall be proportioned so as to furnish sufficient air at suitable pressure to the ejector to completely empty the sump or storage tank with the compressor not operating. The end pressure in the tank shall be not less than two (2) pounds for each foot of height through which sewage is raised.

Section 20. Ejectors for Subsoil Drainage. When subsoil catch basins are installed below the sewer level, automatic ejectors, or an approved type, may be used. Such ejectors or any device raising subsoil water shall discharge into a properly trapped fixture or into a storm-water drain.

Section 21. Drainage of Yards, Areas and Roofs. All roofs, paved areas, courts, and courtyards shall be drained into a storm water system or a combined sewerage system, but not into sewers intended for sewage only. When drains are connected to a combined sewerage system, they shall be trapped. If roof leaders, conductors, or gutter openings are located more than ten (10) feet from a window, scuttle, or air shaft, a trap shall not be required. Traps shall be set below the frost line or on the inside of the building. Where there is a storm or combined sewer available, it may discharge into a drainage area unless otherwise prohibited by the proper authorities. When such drains are not connected to a combined sewer a trap is not required.

Section 22. Size of Rain Water Leader. No inside leader shall be less size than the following:

Area of Roof (In Square Feet)	Leader, Diameter (Inches)
Up to 90	1 1/2
91 to 270	2
271 to 810	3
811 to 1,800	3 1/2
1,801 to 3,600	4
3,601 to 5,500	5
5,501 to 9,600	6

Section 23. Inside Conductors or Roof Leaders. When conductors and roof leaders are placed within the walls of any building, or in an interior court or ventilating pipe shaft, they shall be constructed of cast iron pipe, galvanized wrought iron, galvanized steel, copper, aluminum, schedule 40 ABS/PVC DMV pipe or reinforced thermosetting resin pipe conforming to ASTM D-2996 (red and silver thread). The vertical distance of PVC or ABS conductors shall not exceed thirty (30) feet from the base through the terminus through the roof.

Section 24. Outside Conductors. When outside sheet metal conductors or downspouts are connected to a house drain, they shall be connected by means of a cast iron pipe extending vertically at least one (1) foot above the grade line. Along public driveways, without side walks, they shall be placed in niches in the walls, protected by wheel guards, or enter the building through the wall at a forty-five (45) degree slope at least twelve (12) inches above the grade.

Section 25. Defective Conductor Pipes. When an existing sheet metal conductor pipe within the walls of any building becomes defective, such a conductor shall be replaced by one which conforms to this code.

Section 26. Vent Connections with Conductors Prohibited. A conductor pipe shall not be used as a soil, waste or vent pipe, nor shall any soil, waste, or vent pipe be used as a conductor.

Section 27. Overflow Pipes. Overflow pipes from cisterns, supply tanks, expansion tanks, or drip pans shall connect only indirectly with any house sewer, house drain, soil or waste pipe.

Section 28. Subsoil Drains, Below Sewer Level. Subsoil drains shall discharge into a sump or receiving tank. It shall be automatically lifted and discharged into the storm drainage system or upon the ground outside the building that it serves.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: August 17, 1989

FILED WITH LRC: October 11, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on November 21, 1989 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by November 16, 1989, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Master and journeyman plumbers and users of State Plumbing Code.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): State Plumbing Code statewide enforced, no competition.

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Updating State Plumbing Code and distributing amendments.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local

revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were rejected; State Plumbing Code and Board of Housing review proposed amendments and accept on basis of acceptability with limits defined.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No regulation or statute in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This amendment approves a new material for house or combined sewers.

TIERING: Was tiering applied? Yes.

CABINET FOR HUMAN RESOURCES Office of Inspector General (Proposed Amendment)

900 KAR 2:010. Access and hours of visitation.

RELATES TO: KRS 216.537, 216.540

STATUTORY AUTHORITY: KRS 194.050, 216.540, 216.545

NECESSITY AND FUNCTION: The Cabinet for Human Resources must set forth criteria pertaining to the ability of the administrator of a long term care facility to terminate visitation to that facility. This regulation is designed to give guidance to administrators under the provisions of KRS 216.540(4) and to comply with the requirements of KRS 216.537 concerning hours of visitation.

Section 1. Definitions. (1) "Administrator" means the administrator of a long term care facility subject to the provisions of the nursing home reform act, KRS 216.535 et seq.

[(2) "Cabinet" means Cabinet for Human Resources.]

[(2) [(3)] "Designated representative" means with respect to an administrator, a member of the long term care facility's existing staff who has been authorized in writing by the administrator to act in the absence of the administrator. In the case of the long term care ombudsman, "ombudsman's designee" means an individual, association or corporation authorized by contract to act as agent for certain specified purposes in behalf of the long term care ombudsman.

[(4) "Long term care facility" means those health care facilities in the Commonwealth which are defined by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing homes and intermediate care facilities for the mentally retarded and developmentally disabled.]

[(5) "Resident" means any person admitted to a long term care facility.]

Section 2. The administrator of a long term care facility or his designated representative may request those groups or individuals assured access during visiting hours under the provisions of KRS 216.540(1)(a) through (c) and those groups or individuals assured access under

KRS 216.540(5) to terminate visitation upon the occurrence of any one (1) of the following:

(1) A resident of the facility is physically or verbally abused by the individual or group;

(2) Any individual carries a firearm or other deadly weapon into the facility who is not a peace officer. For the purpose of this regulation, "deadly weapon" is defined as including, but not limited to, any weapon from which a shot, readily capable of producing death or serious physical injury, may be discharged, or a switchblade knife, gravity knife, billy, blackjack, or metal knuckles;

(3) Any individual or group commits a felony or misdemeanor while on the facility's premises; or

(4) Any individual or group is visibly under the influence of alcohol or controlled substances.

Section 3. Those individuals assured access during visiting hours under the provisions of KRS 216.540(1)(b) and (c) have assured access to only the residents' dining area, living area, recreation area, lounge and areas open to the general public. Access to other areas within the facility may be gained after having received the permission of the administrator or his designated representative to enter the area in question.

Section 4. Those groups or individuals assured access during visiting hours under the provisions of KRS 216.540(1)(a) through (c), except for family and legal guardians, including employees of agencies within the Cabinet duly appointed legal guardian by a court of law, and KRS 216.540(5) are:

(1) Upon entering the facility, to promptly advise the administrator or his designated representative of their presence; and

(2) Not to enter the living area of any resident without identifying themselves to the resident. Failure to comply with the requirements of this section may be grounds for requesting termination of visitation.

Section 5. In order to satisfy the requirements for licensure by the state, a long term care facility shall establish daily visiting hours which, at a minimum, shall consist of six (6) hours between the hours of 8 a.m. and 5 p.m. local time, and two (2) hours between the hours of 5 p.m. and 8 p.m. local time. All visiting hours are to be posted in a conspicuous place in the lobby, in the entrance way, or at the front door of the long term care facility.

Section 6. Administrators of long term care facilities may establish visiting hours in addition to those required pursuant to KRS 216.537.

Section 7. Representatives or employees of the Cabinet for Human Resources, including the long term care ombudsman or the long term care ombudsman's designee, any representative or employee of any local government entity having responsibility regarding residents of long term care facilities, and the family or legal guardian(s) of any individual resident shall have unrestricted access to and in all long term care facilities.

Section 8. Nothing in this regulation shall be deemed to prohibit or restrain the right of a resident of a long term care facility to deny visitation or to terminate a visit by any individual or group.

Section 9. Each administrator of a long term care facility shall appoint a member of the facility's existing staff to act as his designated representative present at the facility and authorized to act in the absence of the administrator.

Section 10. This regulation shall become part of the statement required by KRS 216.545(1) to be posted in the long term care facility.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

**CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)**

900 KAR 2:020. Appeals.

RELATES TO: KRS 216.567

STATUTORY AUTHORITY: KRS 194.050, 216.567

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized by KRS 216.567 to establish the manner in which appeals are to be presented on any decision on ratings, citations or penalties assessed pursuant to KRS 216.535 et seq. This regulation is designed to set forth the procedure by which appeals from assignment of ratings, imposition of citations and assessment of penalties shall be pursued within the Cabinet for Human Resources.

Section 1. Definitions. [(1) "Cabinet" means Cabinet for Human Resources.]

[(1) [(2)] "Citation" means a written notice of violation issued pursuant to KRS 216.555.

[(3) "Licensee" in the case of a licensee who is an individual means the individual; in the case of a licensee who is a corporation, association or partnership means the corporation, association or partnership.]

[(4) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.]

[(2) [(5)] "Party" means the licensee operating a long-term care facility.

Section 2. (1) Upon the assignment of a rating for a long-term care facility pursuant to KRS 216.550, or whenever the cabinet has reason to believe there has been a violation of any requirement enforced by the cabinet pursuant to KRS 216.555, or whenever the cabinet assesses a penalty pursuant to KRS 216.557 or 216.560, it shall issue and serve by certified mail or by personal service on the licensee of the facility, the administrator, or designated representative as defined in 900 KAR 2:010, or its agent for service of process a written notice of rating, citation or penalty. Said notice shall set forth the rating assigned, citation made, or penalty assessed, together with the specific findings of the cabinet alleged to result in the action taken and shall advise the licensee of the facility of his right to appeal the imposition of such rating, citation or penalty at a hearing before the cabinet.

(2) Within twenty (20) days of the receipt of

the written notice of action by the cabinet, the licensee of the facility may file a written request for hearing with the Secretary of the Cabinet for Human Resources. Upon receipt of the written request for hearing, the Secretary shall appoint an impartial hearing officer to hear and decide upon appealed decisions.

(3) A hearing shall be scheduled and commenced within thirty (30) days of receipt of the request for hearing. Notice of the hearing shall be mailed by certified mail, return receipt requested, to the parties. The notice of the hearing shall include the legal authority for the hearing, together with reference to the statutes, regulations and administrative action by the cabinet involved.

(4) Prior to the formal hearing, and upon seven (7) days' written notice to all parties, delivered personally or by certified mail, return receipt requested, the hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences are to be open to the public. A written prehearing conference report shall be part of the record.

(5) Any party to a hearing and the administering agency may be represented by counsel and may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions of witnesses who, in his opinion, for good cause shown cannot be present at the hearing. A hearing officer shall preside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.

(6) All testimony at the hearing shall be recorded but need not be transcribed unless the decision of the hearing officer is subject to appeal. Any party to a proceeding may request a transcript of the proceeding and shall pay the entire cost of the preparation of the transcript.

(7) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(8) Within thirty (30) days of adjournment of the hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the record of the proceeding. The record shall include:

(a) The notice of rating, citation, or penalty assessed which was forwarded to the licensee;

(b) Any staff reports, memoranda, or documents prepared by or for the cabinet regarding the matter under review which were introduced at the hearing;

(c) Any information provided by the parties which was introduced at the hearing;

(d) Any other evidence admitted during the hearing with respect to the matter under review;

(e) Upon its completion, the prehearing conference report, if any, and the report of the hearing officer containing the findings of fact,

conclusions of law and final decision.

(9) Any party aggrieved by the final decision may appeal that decision to the Franklin Circuit Court in accordance with KRS 216.570. Any appeal of a Type A or Type B citation shall in no way be construed to limit the authority of the cabinet to act pursuant to KRS 216.573 or KRS 216.577 for failure to correct a Type A or Type B violation in a timely manner.

(10) No hearing officer shall participate in any hearing involving a long term care facility with which he has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship.

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES Office of Inspector General (Proposed Amendment)

900 KAR 2:030. Quality of care rating system for long term care facilities.

RELATES TO: KRS 216.550

STATUTORY AUTHORITY: KRS 194.050, 216.550

NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed to establish a system for rating the quality of care provided by long term care facilities. The purpose of this regulation is to set forth the uniform criteria for evaluation of long term care facilities based on their compliance with licensure and statutory requirements.

Section 1. Definitions. (1) "Biologicals" means medicinal preparations made from living organisms and their products, including but not limited to serums, vaccines, antigens and antitoxins.

[(2) "Cabinet" means Cabinet for Human Resources or any subdivision thereof.]

[(3) "Level I areas" means those areas which are essential to maintaining the health, safety or security of patients.]

[(4) "Level II areas" means those areas which are less directly related to the health, safety or security of residents, but which are important to the overall quality of care and services provided by long term care facilities.]

[(5) "Licensee" in the case of a licensee who is an individual means the individual, and in the case of a licensee who is a corporation, partnership or association means the corporation, partnership or association.]

[(6) "Long term care facility" means those health care facilities in the Commonwealth which are defined by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.]

[(2) [(7)] "Plan of correction" means a written proposal by the licensee to remedy the regulatory violations cited by the cabinet; the proposal includes dates by which the remedies will have been made.

[(3) [(8)] "Representative sampling" means information obtained at random from the residents and families or legal guardians of the residents at the facility in question, together with that obtained from ombudsman committees in the district wherein the facility is located, and the staff of the long term care facility in question. In family care homes, all residents shall be questioned; in all other long term care facilities ten (10) percent or fifteen (15) of

the residents, whichever is greater, shall be questioned.

Section 2. (1) For the purposes of the determination of quality of care of long term care facilities in the Commonwealth of Kentucky, the following are declared to be Level I areas of concern:

- (a) Medical services;
- (b) Nursing service;
- (c) Drugs and biologicals;
- (d) Dietary and nutritional service;
- (e) Life safety code or other applicable building code;
- (f) Physical and restorative therapy;
- (g) Physical environment;
- (h) Administration; and
- (i) Patient rights.

(2) The following are declared to be Level II areas of concern:

- (a) Social services and activities; and
- (b) Recordkeeping.

Section 3. Pursuant to the provisions of KRS 216.550(1) and in accordance with KRS 216.550(3), applicable minimum state statutory and licensure requirements shall serve as the uniform criteria for the evaluation of long term care facilities as to quality of care. Appendices I through VI are the applicable minimum licensure requirements arranged according to quality of care area of concern.

Section 4. (1) The cabinet shall, at the time of its annual licensure inspection, conduct an evaluation of long term care facilities as to quality of care. Each long term care facility shall, upon inspection and evaluation, be assigned either a superior rating, an unrated license, or a conditional rating.

(a) To receive an unrated license as to quality of care, each long term care facility must meet the applicable minimum state requirements for licensure.

(b) To achieve a "superior" rating as to quality of care, each long term care facility must demonstrate to the cabinet that the facility exceeds minimum standards for licensure in six (6) of the eleven (11) areas of concern identified in KRS 216.550(1)(a) through (k) and as set forth in Section 2 of this regulation, and meets at least the minimum requirements of all other applicable state licensure regulations pertaining to long term care facilities. In addition to meeting the minimum licensure requirements, achievement of at least one (1) of the goals set forth in six (6) of the eleven (11) areas of concern listed in Appendices A through F shall result in a superior rating.

(c) Failure to comply with the requirements set forth in subsection (1)(a) of this section and Section 3 of this regulation or receipt of a Type "A" or "B" citation pursuant to KRS 216.555 shall result in a "conditional" rating. Notice of a conditional rating shall be sent by certified mail to the licensee within five (5) working days of inspection. Upon receipt of a "conditional" rating, the licensee shall prepare, within ten (10) working days of assignment, a plan of correction for all cited deficiencies and shall submit said plan for the cabinet's approval. A "conditional" rating shall be effective from the time of the rating inspection until either:

1. Upon correction of deficiencies as

specified on the approved plan of correction;

2. Such time as the cabinet finds the facility in compliance with minimum licensure standards;

3. The determination of the cabinet is reversed upon appeal pursuant to KRS 216.553; or

4. Correction of Type A or Type B citations within the approved time.

(2) For the purpose of assignment of a rating, the evaluation shall take into consideration findings from other official reports, surveys, interviews, investigations, and inspections.

(3) In making its determination as to the degree of compliance with the requirements of this regulation and as to the overall quality of care and services in a long term care facility, the cabinet shall consider interviews and surveys of a representative sample of residents, families and legal guardians of residents, ombudsman committees in the district wherein the facility is located, and the staff of the long term care facility in question.

(4) Any licensee aggrieved by an assignment of rating pursuant to KRS 216.550 may appeal said assignment to the cabinet within twenty (20) days after notice of assignment in accordance with the requirements of KRS 216.567. For the purposes of appeal of a particular rating pursuant to KRS 216.553, a determination of the cabinet shall be deemed final upon receipt of written notice of rating indicated by the date of the return receipt or if receipt is refused, upon date of refusal. In no event shall any rating assigned by the cabinet be posted until the final decision of the cabinet pursuant to KRS 216.567.

Section 5. If, at any time during the rating year, the cabinet finds a long term care facility out of compliance with minimum licensure requirements or exceeds the minimum licensure requirements within six (6) of the eleven (11) areas as set forth in KRS 216.550(1)(a) through (k) and Section 2 of this regulation, the cabinet may alter the facility's quality of care rating accordingly.

Section 6. In the event of a change of ownership, the rating obtained by the prior owner shall continue in effect until the next regularly scheduled licensure inspection unless modified after inspection by the cabinet upon its own initiative or undertaken upon request.

Section 7. The following Appendices A through F set forth guidelines for use by licensees of long term care facilities in their efforts to obtain a "superior" rating for the facility in question. A "superior" rating shall be issued to any long term care facility accomplishing at least one (1) of the goals set forth in six (6) of the eleven (11) areas listed in KRS 216.550(1)(a) through (k) and Section 2 of this regulation.

APPENDIX I FAMILY CARE HOMES

All references are to sections of 902 KAR 20:041, unless otherwise indicated.

A. Level I

- (1) Medical Services
Section 4(1)(a) through (d)
- (2) Nursing Services
Section 4(1)(i)
Section 4(2)(a)1 through 4

- (3) Drugs and Biologicals
Section 4(1)(e) through (h)
- (4) Dietary and Nutritional Service
Section 4(3)(a) through (i)
- (5) Life Safety Code or Other Applicable
Building Code
Section 6(3) through (6)
- (6) Physical and Restorative Therapy
No requirements for licensure
- (7) Physical Environment
Section 4(2)(b), (c)
Section 4(4)(a) through (g)
Section 5
Section 6(1), (2)
- (8) Administration
Section 1
Section 3(1) through (6), (9) through
(11), (14)
- (9) Patient Rights
Section 3(13)
Section 4(2)(d)

B. Level II

- (1) Social Services and Activities
Section 3(7)
- (2) Recordkeeping
Section 3(8)
Section 3(12)

APPENDIX III
PERSONAL CARE HOME

All references are to sections of 902 KAR
20:036, unless otherwise indicated.

A. Level I

- (1) Medical Services
Section 4(1)(a), (c), (g)
Section 4(1)(j)
- (2) Nursing Services
Section 4(1)(b); (h); (k)
Section 4(3)(a) through (e)
- (3) Drugs and Biologicals
Section 4(1)(e), (f)
- (4) Dietary and Nutritional Service
Section 4(2)(c)
- (5) Life Safety Code or Other Applicable
Building Code 902 KAR 20:031, as
applicable
- (6) Physical and Restorative Therapy
No requirements
- (7) Physical Environment
Section 4(1)(i)
Section 4(2)(a), (b)
- (8) Administration
Section 1
Section 3(1)(a), (b)
Section 3(2)
Section 3(3)(a) through (d)
Section 3(6)(a) through (c)
Section 3(7)(a) through (e)3
Section 3(7)(e)6 through 12
Section 3(7)(f)
- (9) Patient Rights
Section 3(4), (5)
Section 3(7)(e)4, 5

B. Level II

- (1) Social Services and Activities
Section 4(4)(a), (b)
- (2) Recordkeeping
Section 3(8), (9)
Section 4(1)(d)

APPENDIX III
NURSING HOMES

All references are to sections of 902 KAR
20:048, unless otherwise indicated.

A. Level I

- (1) Medical Services
Section 4(1)(a) through (d)
Section 4(6), (7)
Section 4(5)(f)5a, b, c
- (2) Nursing Services
Section 3(9)(c)5 through 7
Section 4(2), (4)
- (3) Drugs and Biologicals
Section 3(9)(c)8
Section 4(5)
- (4) Dietary and Nutritional
Section 3(9)(c)10
Section 4(11)(a)
- (5) Life Safety Code or Other Applicable
Building Code 902 KAR
20:046, as applicable
- (6) Physical and Restorative Therapy
Section 3(9)(c)9a, b, c
Section 4(3)
- (7) Physical Environment
Section 4(11)(b), (c)
- (8) Administration
Section 3(1)
Section 3(2)(a), (b)
Section 3(3)(d)
Section 3(4)(a) through (d)
Section 3(6)(a) through (d)
Section 3(7)
Section 3(8)(a) through (f)
Section 3(9)(a), (b)
Section 3(9)(c)1, 2, 3, 4, 11, 12
Section 3(9)(d)
Section 3(9)(e)
Section 3(9)(f)1, 2
- (9) Patient Rights
Section 3(5)

B. Level II

- (1) Social Services and Activities
Section 4(8), (9), (10)
- (2) Recordkeeping
Section 3(3)(a), (b), (c); (10)

APPENDIX IV
INTERMEDIATE CARE FACILITY

All references are to sections of 902 KAR
20:051, unless otherwise indicated.

A. Level I

- (1) Medical Services
Section 4(2)
Section 4(6)
- (2) Nursing Services
Section 3(9)(c)5
Section 4(1), (3), (5)
- (3) Drugs and Biologicals
Section 3(9)(c)6
Section 4(4)
- (4) Dietary and Nutritional Services
Section 4(10)(c)
Section 3(9)(c)7
- (5) Life Safety Code or Other Applicable
Building Code 902 KAR
20:056, as applicable
- (6) Physical and Restorative Therapy
No requirements

- (7) Physical Environment
Section 4(10)(a), (b)
- (8) Administration
Section 3(1) through (3); (4)(a), (c), (d); (6) through (8)
Section 3(9)(c)1 through 4, 8, 9
Section 3(9)(a), (b), (d) through (f)
- (9) Patient Rights
Section 3(4)(b), (5)

B. Level II

- (1) Social Services and Activities
Section 4(7), (8), (9)
- (2) Recordkeeping
Section 3(10)

APPENDIX V

INTERMEDIATE CARE FACILITIES FOR THE MENTALLY
RETARDED AND DEVELOPMENTALLY DISABLED

All references are to sections of 902 KAR 20:086, unless otherwise indicated.

A. Level I

- (1) Medical Services
Section 3(7)(a), (b)
Section 4(1), (4), (8), (14)
- (2) Nursing Services
Section 3(11)(i)
Section 4(5), (7)
- (3) Drugs and Biologicals
Section 3(11)(j)
Section 4(6)
- (4) Dietary and Nutritional Services
Section 3(11)(k)
Section 4(16)(c)
- (5) Life Safety Code or other applicable
Building Code 902 KAR
20:056, as applicable
- (6) Physical and Restorative Therapy
Section 4(11), (12), (13)
- (7) Physical Environment
Section 4(16)(a), (b)
- (8) Administration
Section 3(1) through (3)
Section 3(5)(a), (c) and (d)
Section 3(7)(c), (d) and (e)
Section 3(8), (9)
Section 3(11)(a) through (h), (1)
through (n)
Section 4(2), (3)
- (9) Patient Rights
Section 3(5)(b) and (6)

B. Level II

- (1) Social Services and Activities
Section 4(9), (10), (15)
- (2) Recordkeeping
Section 3(4), (10)

APPENDIX VI

SKILLED NURSING FACILITIES

All references are to sections of 902 KAR 20:026, unless otherwise indicated.

A. Level I

- (1) Medical Services
Section 4(1), (6), (7)
- (2) Nursing Services
Section 3(8)(d)3, 4, 5
Section 4(2), (4), (5)(f)4
- (3) Drugs and Biologicals
Section 3(8)(d)6
Section 4(5)(a) through (f)

- (4) Dietary and Nutritional Services
Section 3(8)(d)8
Section 4(10)(a)
- (5) Life Safety Code or Other Applicable
Building Code 902 KAR 20:021, as
applicable
- (6) Physical and Restorative Therapy
Section 3(8)(d)7
Section 4(3)
- (7) Physical Environment
Section 4(10)(b), (c)
- (8) Administration
Section 3(1), (2), (3)(a), (b), (c), (e)
Section 3(5) through (7)
Section 3(8)(a), (b), (c), (d)1, 2
Section 3(8)(d)9, (e)
Section 4(5)(f)5
- (9) Patient Rights
Section 3(3)(d), (4)

B. Level II

- (1) Social Services and Activities
Section 4(8), (9)
- (2) Recordkeeping
Section 3(9)

APPENDIX A

FAMILY CARE HOMES

(Area of Concern, Goals)

Medical Services

- (1) All residents receive annual physicals by a physician.
- (2) Residents have annual evaluation by dentist and ophthalmologist.
- (3) Other, if submitted to and approved by the Cabinet for Human Resources.

Nursing Service

- (1) Residents are up and dressed during the day except during short illnesses or naps.
- (2) If operator is not a licensed nurse, residents are evaluated by licensed nurse semiannually and evidence is shown of recommendations being acted upon.
- (3) Other, if submitted to and approved by the Cabinet for Human Resources.

Drugs and Biologicals

- (1) Residents may select their own pharmacy/pharmacist.
- (2) Drugs and biologicals not covered under the facility's basic rate.
- (3) Other, if submitted to and approved by the Cabinet for Human Resources.

Dietary and Nutritional Services

- (1) Each resident selects at least one meal per week.
- (2) Menus are prepared with assistance of qualified nutritionists as defined in 902 KAR 20:036, Section 2(10).
- (3) Other, if submitted to and approved by the Cabinet for Human Resources.

Life Safety Code

- (1) Facility has smoke alarms of sufficient quantity to cover the entire dwelling.
- (2) Facility interior and exterior are modified so that each resident may exit unassisted.
- (3) Other, if submitted to and approved by the Cabinet for Human Resources.

Physical and Restorative Therapy

- (1) Transporting of resident to and assistance in arranging needed therapy; e.g., physical, speech.
- (2) Availability of special devices required by resident for maximum functioning; e.g., eating, reading, hearing devices.
- (3) Other, if submitted to and approved by the Cabinet for Human Resources.

Physical Environment

- (1) Resident's personal belongings are displayed in facility.
- (2) Dwelling is air conditioned in all spaces occupied by residents.
- (3) Residents have safe and pleasant outside area for their use.
- (4) Dwelling has common area for unrestricted use by residents and the families or friends that is separate from their bedroom.
- (5) Other, if submitted to and approved by the Cabinet for Human Resources.

Social Services and Activities

- (1) Weekly planned and supervised tours, visits, shopping or attendance out in community.
- (2) At least one hour daily planned and supervised in-house social or recreational activities, using appropriate supplies and equipment; exclusive of television and radio.
- (3) If desired by resident, the newspaper of the resident's choice is available to the resident.
- (4) Facility has daily reality orientation program for each confused resident.
- (5) Other, if submitted to and approved by the Cabinet for Human Resources.

Patient Rights

- (1) Resident's personal funds and benefits are controlled by an individual or entity having no financial interest in the resident's funds or the resident is able to and does control his own finances.
- (2) If operator is payee for any resident entitlement, use of resident's funds is reviewed, at least annually.
- (3) Other, if submitted to and approved by the Cabinet for Human Resources.

Recordkeeping

- (1) Records of all fees and charges to resident.
- (2) Other, if submitted to and approved by the Cabinet for Human Resources.

Administration

- (1) Operator is professionally qualified in a health services field.
- (2) Operator shows evidence of having attended 10 hours of training in long-term care services in a twelve (12) month period in programs approved by the Cabinet for Human Resources, Division of Licensing and Regulation; this is in addition to 902 KAR 20:041, Section 1(5).
- (3) Other, if submitted to and approved by the Cabinet for Human Resources.

APPENDIX B
PERSONAL CARE HOMES
(Area of Concern, Goals)

Medical Services

- (1) Physician spends at least one hour per week interacting with residents at facility for each 25 residents over and above that which is normally required for patient care.
- (2) Dental services provided at the facility.
- (3) Ophthalmologist examinations for residents annually.
- (4) Other, if submitted to and approved by the Cabinet for Human Resources.

Nursing Services

- (1) If operator is not a licensed nurse, residents are evaluated by a licensed nurse at least semiannually and evidence is shown of recommendations being acted upon.
- (2) Nursing service has an organized call-in program to effectively deal with employee absences.
- (3) Other, if submitted to and approved by the Cabinet for Human Resources.

Drugs and Biologicals

- (1) Residents may select their own pharmacy/pharmacist.
- (2) Facility uses 24-hour unit dose system.
- (3) Other, if submitted to and approved by the Cabinet for Human Resources.

Dietary and Nutritional Services

- (1) Residents select at least one meal per week.
- (2) Available self-help devices or adaptive devices and program for use.
- (3) Facility provides menus for residents to choose at least one meal next day.
- (4) Other, if submitted to and approved by the Cabinet for Human Resources.

Life Safety Code

- (1) Organized safety committee and evidence of its effectiveness.
- (2) Local fire department provides in-service to staff and residents yearly on fire prevention and emergency action in the event of a fire.
- (3) Other, if submitted to and approved by the Cabinet for Human Resources.

Physical and Restorative Therapy

- (1) An exercise program designed by a licensed physical therapist is provided for those residents who have an adequate level of functioning and are physically able to participate.
- (2) Physical therapy needs are part of initial evaluation of residents in facility.
- (3) Other, if submitted to and approved by the Cabinet for Human Resources.

Physical Environment

- (1) Facility is air conditioned in all spaces occupied by residents.
- (2) Residents have safe and pleasant outside area for their use.
- (3) Other, if submitted to and approved by the Cabinet for Human Resources.

Social Services and Activities

- (1) An organized resident council selects at least 25 percent of the activities.

(2) Separate staff for social services and activities for facilities with at least 50 residents.

(3) Activities out of facility at least once a week.

(4) Pet therapy program organized for residents with local or state humane society or other benevolent groups.

(5) Other, if submitted to and approved by the Cabinet for Human Resources.

Patient Rights

(1) Resident's personal funds and benefits are controlled by an individual having no financial interest in the resident's funds or the resident is able to control his own finances.

(2) If operator is payee for any resident entitlement, use of resident's funds is reviewed, at least annually.

(3) Organized resident council functions and facility responds to their requests and inquiries and evidence is available to demonstrate such.

(4) Other, if submitted to and approved by the Cabinet for Human Resources.

Recordkeeping

(1) Medical records are designed and maintained by an accredited records technician, registered records administrator, or medical records designee has consultation from accredited records technician or registered records administrator.

(2) Someone other than charge nurse or administrator is designated in charge of records.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Administration

(1) Tuition assistance program for employees.

(2) Administrators who are not licensed nursing home administrators show evidence of having attended 10 hours per year of continuing education class that has been approved by the Kentucky Board of Nursing Home Administrators.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

APPENDIX C INTERMEDIATE CARE FACILITIES (See Appendix E)

APPENDIX D SKILLED NURSING FACILITIES (See Appendix E)

APPENDIX E NURSING HOMES (Area of Concern, Goals)

Medical Services

(1) Physician participates on voluntary basis in in-service education program and inpatient care planning other than diagnosis and treatment.

(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Nursing Services

(1) Organized call-in program to deal with the problems of employee absences.

(2) A comprehensive nursing audit program for all residents

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Drugs and Biologicals

(1) Residents may select their own pharmacy/pharmacist.

(2) 24-hour per day unit dose system for drug administration.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Dietary and Nutritional Services

(1) A volunteer program with training and return demonstrations in assisting with serving and feeding so that all residents may eat at the same time.

(2) Participation of relatives and friends in social occasions, including but not limited to birthday parties and cookouts.

(3) Dietary supplements that are made at the facility from approved recipes; e.g., supplemental milkshakes.

(4) Facility provides menus for residents to choose at least one meal the next day.

(5) Other, if submitted to and approved by the Cabinet for Human Resources.

Life Safety Code

(1) An organized safety committee and evidence of their effectiveness and impact on the facility.

(2) Local fire department provides in-service to staff and residents yearly on fire prevention and emergency action in the event of a fire.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Physical and Restorative Therapy

(1) Component flexible; must be submitted to the Cabinet for review and approval.

Physical Environment

(1) Facility is air conditioned in all spaces occupied by residents.

(2) Residents are provided a safe and pleasant outside area.

(3) Other, if submitted to and approved by the Cabinet for Human Resources.

Social Services and Activities

(1) An organized resident council selects at least 25 percent of activities.

(2) A guardian/relative/friend counseling program to deal with the problems and maintain continual communication.

(3) Pet therapy program organized for residents with local or state humane society or other benevolent groups.

(4) Other, if submitted to and approved by the Cabinet for Human Resources.

Patient Rights

(1) Organized resident council functions and facility responds to their requests and inquiries; evidence is available to demonstrate facility's response.

(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Recordkeeping

(1) Decubitus documentation is regularly (at least weekly) updated; includes at least a monthly photograph of the decubitus.

(2) Other, if submitted to and approved by the Cabinet for Human Resources.

Administration

(1) Organization and utilization of a welcoming committee composed of residents, staff of the facility and at least one member of the administration to provide assistance to new residents in transition to life in the long term care facility.

(2) Other, if submitted to and approved by the Cabinet for Human Resources.

APPENDIX F

INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

(Area of Concern, Goals)

With the exception of those areas of concern dealing with patient rights and social services and activities, intermediate care facilities for the mentally retarded share the goals as set forth in Appendix E. As for patient rights and social services and activities, the following goals apply:

Patient Rights

(1) Facility has voluntary family/guardian council that meets at least monthly and makes inquiries and recommendations to the facility; evidence is available that the facility has acted upon the inquiries and recommendations and the council has received a response.

Social Services and Activities

(1) Facility has organized occupational therapy program with private industry so that residents may learn and benefit from their work in a practical setting.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

900 KAR 2:040. Citations and violations; criteria and specific acts.

RELATES TO: KRS 216.550, 216.555, 216.557, 216.560, 216.563, 216.565, 216.577

STATUTORY AUTHORITY: KRS 194.050, 216.555, 216.557, 216.563, 216.577

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to publish, after consultation with industry, professional and consumer groups, regulations setting forth the criteria and, where feasible, the specific acts which constitute Type A and B violations. This regulation is designed to set forth the criteria and, where feasible, the specific acts.

Section 1. Definitions. (1) "Active treatment" means daily participation in accordance with an individual plan of care and services, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or rehabilitative services offered by or procured by contract or other written agreement by the institution for its residents.

(2) "Activities of daily living" means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions) and socialization (example: being able to shop, being considerate of others, working with others and participating in activities).

(3) "Administrator" means the administrator of a long term care facility.

[(4) "Cabinet" means Cabinet for Human Resources.]

(4) [(5)] "Citation" means a written

notification of violation of regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 or the provisions of KRS 216.510 to 216.525, or applicable federal law and regulations governing the certification of a long term care facility under Title 18 or 19 of the Social Security Act which violation has been classified a "Type A" or "Type B" violation pursuant to this regulation. A citation is not a statement of deficiency.

(5) [(6)] "Developmental nursing services" means treatment of a person's developmental needs by designing interventions to modify the rate and/or direction of the individual's development especially in the areas of self-help skills, personal hygiene and sex education while also meeting his physical and medical needs.

[(7)] "Licensee" in the case of a licensee who is an individual means the individual and in the case of a licensee who is a corporation, partnership, or association means the corporation, partnership or association.]

[(8)] "Long term care facility" means those health care facilities in the Commonwealth which are defined by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.]

[(6)] [(9)] "Nonambulatory" means unable to walk without assistance.

[(7)] [(10)] "Nonmobile" means unable to move from place to place.

[(8)] [(11)] "Protective device" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

[(9)] [(12)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body, and when used in the context of an intermediate care facility for the mentally retarded or developmentally disabled, means any pharmaceutical agent or any physical or mechanical device used to restrict the movement of an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavioral) treatment.

[(13)] "Secretary" means Secretary for Human Resources.]

[(10)] [(14)] "Type A violation" means a violation by a long term care facility of the regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 and 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations governing the certification of a long term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type A" violation pursuant to this regulation. Said violation presents an imminent danger to any resident of a long term care facility and creates substantial risk that death or serious mental or physical harm will occur.

[(11)] [(15)] "Type B violation" means a violation by a long term care facility of the

regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 and 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal law and regulations governing the certification of a long term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type B" violation pursuant to this regulation. Such violation presents a direct or immediate relationship to the health, safety or security of any resident, but which does not create an imminent danger and which is categorized a "Type B" violation in this regulation.

Section 2. If, upon inspection of a long term care facility for quality of care rating or investigation of such facility, the cabinet finds that there exists a "Type A" or "Type B" violation at the facility, a citation shall be issued to the licensee. Said citation shall specify, in writing, the nature of the violation and specify statutory provisions or regulations alleged to have been violated.

Section 3. Type A Violations. (1) Upon the finding of a Type A violation, the cabinet shall advise the licensee, administrator or his designated representative, in writing, delivered as soon as practicable but no later than three (3) days, of the existence of said violation. Written notification may be delivered either by certified mail, return receipt requested, or by personal service of said notification upon the licensee, administrator or his designated representative. The time for correction of said violation shall begin upon the date written notification is received, or in the event the delivery is refused, upon the date of refusal.

(2) A "Type A" violation shall be abated or eliminated immediately upon written notification, unless a fixed period of time not to exceed ten (10) days, as determined by and within the discretion of the cabinet, is required for correction.

(3) A "Type A" violation is subject to a civil penalty in an amount not less than \$1,000 nor more than \$5,000 for each and every violation.

(4) Where a licensee has failed to correct a "Type A" violation within the time specified for correction, the cabinet shall assess the licensee a civil penalty in the amount of \$500 for each day such deficiency continues beyond the date specified for correction.

(5) Application for an extension of time may be granted by the cabinet upon a showing by the licensee that adequate arrangements have been made to protect the health and safety of the residents. No extension of time so granted shall exceed ten (10) days.

Section 4. (1) The criteria for the conditions which constitute "Type A" and "Type B" violations are:

(a) The uniform criteria established for rating quality of care in accordance with KRS 216.550;

(b) The provisions of KRS 216.515 to 216.525; and

(c) Applicable federal laws and regulations governing the certification of long term care facilities under Titles 18 and 19 of the Social Security Act.

(2) Any violation of the criteria set forth in subsection (1)(a) through (c) of this section

which constitutes an imminent danger and substantial risk of death or serious mental or physical harm to a resident is classified a "Type A" violation.

(3) Any violation of the criteria set forth in subsection (1)(a) through (c) of this section which presents a direct or immediate relationship to the health, safety or security of any resident, but which does not create an imminent danger, is classified a "Type B" violation.

(4) The criteria are to be reviewed at least quarterly for the purpose of more clearly defining the specific acts or circumstances which constitute "Type A" and "Type B" violations.

Section 5. (1) The following specific acts or circumstances in violation of the rating system developed pursuant to KRS 216.550, the provisions of KRS 216.510 to KRS 216.525, or the applicable federal laws and regulations governing certification of long term care facilities under Title 18 or 19 of the Social Security Act and which presents an imminent danger and substantial risk of death or serious physical or mental harm to a resident or patient of the long term care facility shall constitute "Type A" violations.

(a) In all long term care facilities.

1. Persons whose care needs exceed the capability of the facility to provide are knowingly admitted as residents or patients of the facility.

2. A physician is not available and not consulted in the case of serious accident or illness and such consultation and the response of the facility is not reflected within the resident's or patient's file.

3. Physical and pharmaceutical restraints are not used in accordance with the written instructions of the attending physician (and in cases of emergency, oral orders of the physician or nursing assessments made pursuant to KRS 314.011(5)(e) and 314.011(9)(e) are not subsequently reduced to writing), dated and placed within the resident's or patient's file.

4. Protective devices are not used in accordance with the written instructions of the attending physician, dated and within the patient's file.

5. Except in family care homes, the licensee has no evidence of a current inspection by the state fire marshal indicating the facility complies with the applicable provisions of the life safety code.

6. The licensee does not maintain a system of heating and cooling capable of attaining a minimum temperature of seventy-two (72) degrees which shall be provided in occupied areas in winter conditions and a maximum temperature of eighty-five (85) degrees which shall be provided in summer conditions, and in cases of emergency, the licensee does not take necessary precautions to protect the health of residents or patients.

7. In the event of an error in medication, the attending physician is not advised and the error is not recorded within the patient's or resident's file, and correction is not made within one (1) day of the date of discovery.

8. Prescription medication is not kept under lock.

9. The resident's or patient's daily diet provided by the facility does not comply with his medically prescribed special diet or dietary

restriction (except for special days or celebrations medically approved), said special diet or dietary restriction is to appear in writing within the resident's or patient's file.

10. There is not at least three (3) days' supply of food in the facility at all times.

11. The care required by admitted residents retained within the facility exceeds the skill of the licensee to provide.

(b) Family care homes.

1. The licensee does not provide twenty-four (24) hour supervision and assistance to the residents.

2. The licensee is not that person directly responsible for the daily operation of the home and, when temporarily absent, the name of the individual to whom responsibility is delegated is not in writing and available to the cabinet.

3. When prescription medication is required to be administered by licensed personnel, arrangements are not made in writing to assure the use of said personnel.

4. Basements in which residents are housed are not constructed for sleeping quarters and have no outside door.

5. Residents are housed in rooms or detached buildings or enclosures which have not been inspected and approved by the cabinet.

6. The facility has admitted more than three (3) persons as residents.

(c) Personal care homes.

1. Residents of the facility are under the age of sixteen (16) years or are nonambulatory or nonmobile.

2. The number and classifications of personnel required at the facility are not based upon the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:036 as determined in accordance with 902 KAR 20:036, Section 3(7)(f)2.

3. One (1) attendant is not awake and on duty on each floor of the facility at all times.

(d) Intermediate care facilities.

1. Physician services for medical emergencies are not available on a twenty-four (24) hour, seven (7) day a week basis.

2. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire and other emergencies.

3. The facility does not have personnel to meet the needs of the patients on a twenty-four (24) hour basis, the number and classification of personnel are not based upon the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:051, in accordance with 902 KAR 20:051, Section 3(9)(c)2.

4. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community services.

(e) Skilled nursing facilities.

1. The licensee does not provide the facility with a director of nursing services who is a registered nurse and who works full time during the day and who does devote full time to the nursing service of the facility.

2. There is not at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of residents during her tour of duty; when a licensed practical nurse is on duty, no registered nurse is on call.

3. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hour a day basis, the number and classification of personnel so required are not based upon the number of patients, the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:026, in accordance with 902 KAR 20:026, Section 3(8)(d)2.

4. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or services are not contracted for from other community resources.

(f) Nursing homes.

1. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community resources.

2. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergency.

3. The health care of each patient is not under the supervision of a physician and the patient's records do not reflect the frequency of the physician's contacts with the patient.

4. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hour a day basis, the number and classification of personnel so required are not based upon the number of patients, the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by 902 KAR 20:048, in accordance with 902 KAR 20:048, Section 3(9)(c)2.

(g) Intermediate care facilities for the mentally retarded and developmentally disabled.

1. The facility does not maintain and does not follow a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a resident is determined to be lost, unaccounted for, or other unauthorized absence.

2. The facility admits as patients those persons who do not have a physical or mental condition which requires developmental nursing services and an active treatment plan.

3. The licensee does not provide the personnel required to meet the needs of the patients on a twenty-four (24) hours a day basis. The number and classification required is not determined in a manner consistent with the requirements of 902 KAR 20:086, Section 3(11)(c) and in accordance with 902 KAR 20:086, Section 3(11)(f).

4. Physician services for medical emergencies are not available on a twenty-four (24) hour, seven (7) day a week basis.

5. A responsible staff member is not on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire and other emergencies.

6. In the event the patient's condition exceeds the scope of services offered by the facility, the patient, upon written orders of a physician (except in cases of emergency) is not transferred promptly to a hospital or skilled nursing facility or services are not contracted for from other community services.

(2) Pursuant to KRS 216.577, upon a finding that conditions within the facility which constitute the "Type A" violation have not been corrected within the time allowed by the cabinet for correction, the secretary shall take at least one (1) of the following actions with respect to the facility in addition to the issuance of a citation or the assessment of a civil penalty therefor.

(a) Institute proceedings to compel the facility's compliance with the requirement alleged to have been violated.

(b) Institute injunctive proceedings in circuit court to terminate the operation of the facility.

(c) Selectively transfer residents whose care needs are not being adequately met by the long term care facility.

Section 6. Type B Violations. (1) A "Type B" violation shall be corrected within a time determined and approved by the Cabinet.

(2) A "Type B" violation is subject to a civil penalty in an amount not less than \$100 nor more than \$500, provided, however, that if such violation is corrected within the time specified by the Cabinet, no civil penalty shall be imposed.

(3) Where a licensee has failed to correct a "Type B" violation within the time specified for correction by the cabinet, the cabinet shall assess the licensee a civil penalty in the amount of \$200 for each day the deficiency continues beyond the date specified for correction.

Section 7. (1) Upon the finding of a "Type B" violation, the cabinet shall advise the licensee, administrator, or his designated representative in writing, delivered as soon as practicable, but no later than five (5) days, of the existence of said violation. Delivery shall be by certified mail, return receipt requested or by personal service to the licensee, administrator or his designated representative. The time within which the citation shall be corrected shall run from the date of receipt of written notification, or in the event said written notification is refused, from the date of refusal.

(2) The following specific acts or circumstances in violation of the rating system developed pursuant to KRS 216.550, the provisions of KRS 216.510 to 216.525, or the applicable federal laws and regulations governing certification of long term care facilities under Title 18 or 19 of the Social Security Act and which present a direct or immediate relationship to the health, safety or security of any resident but which do not create an imminent danger shall constitute "Type B" violations:

(a) In all long term care facilities.

1. The facility does not have a written fire control and evacuation plan with which those present and responsible for supervision are familiar.

2. The facility does not maintain an active

program of pest control for all areas of its physical plant.

3. The facility does not serve at least three (3) meals per day with not more than fifteen (15) hours between the evening meal and breakfast and such meals do not meet the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders. Between meal and bedtime snacks are not available, except where medically contraindicated.

4. The licensee knowingly violates the provision of KRS 216.515 and 216.520.

5. A complete medical record is not kept on each patient with all entries current, dated and signed.

6. Patients or residents requiring help in eating are not assisted.

7. Except for those facilities with an integrated heating, ventilation and air conditioning system (HVAC system) the licensee does not maintain the facility with screens on windows.

8. Except for family care homes, all food is not procured, stored, prepared, distributed, and served under sanitary conditions consistent with the Kentucky Food Service Code (902 KAR 45:005).

9. If a patient or resident refuses food served, nutritional substitutions are not offered; the consistency of the food is not prepared with reference to the ability of the individual patient to ingest.

10. The facility does not implement a regular program to prevent decubiti with emphasis on the following:

a. Procedures to maintain clean linen of the patient or resident. Clothes and linens are cleaned each time the bed or clothing is soiled. Rubber, plastic or other type of linen protectors are cleaned and completely covered to prevent direct contact with the patient.

b. Effort is made to assist the patient or resident in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient or resident cannot move himself, he has his position changed as often as necessary but not less than every two (2) hours.

11. The facility does not keep resident records and patient files confidential in a manner consistent with the requirements of the Kentucky Revised Statutes and administrative regulations.

12. Except in family care homes, cold water and hot water with a maximum temperature of 110 degrees Fahrenheit are not available for resident or patient use.

13. Meals do not correspond to the posted menus; menus are not planned and posted one (1) week in advance; when changes in the menu are necessary, substitutions do not provide equal nutritive value.

14. The facility does not have an administrator who is responsible for the operation of the facility and does not delegate such responsibility in his absence.

(b) Family care homes.

1. The facility does not have a written procedure for providing or obtaining emergency services.

2. Telephone service, if available in the area, is not accessible to the residents.

3. The facility does not have at least one (1) ABC rated fire extinguisher.

4. The facility does not have one (1) toilet for each six (6) persons in the home, which includes residents receiving care, the licensee and family.

5. Residents are not provided beds at least thirty-three (33) inches wide and six (6) feet long.

6. The facility does not comply with the provisions of 902 KAR 20:041, Section 4(4).

(c) Personal care homes.

1. The facility does not provide each resident with a bed equipped with springs, a clean mattress, a mattress cover, two (2) sheets and a pillow, together with bed covering as required for the patient's comfort.

2. The facility uses special purpose areas for the protection or confinement of a resident which are not approved by the cabinet with specification for the use of the area.

3. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

4. The facility does not maintain a program of orientation and in-service training which shall include at least the following component parts:

a. Policies of the facility with regard to the performance of staff duties;

b. Services provided by the facility;

c. Recordkeeping procedures;

d. Procedures for reporting adult and child abuse, neglect and exploitation to the cabinet pursuant to KRS Chapter 209 and KRS 199.335;

e. Patient rights;

f. Procedures for proper application of physical restraints;

g. The aging process;

h. The emotional problems of illness;

i. The use of medication;

j. Therapeutic diets;

k. Activities of daily living; and

l. Procedures for maintaining a clean healthful and pleasant environment. A record shall be maintained of each training session indicating topics discussed and staff attendance, by name.

5. The facility does not provide encouragement and assistance, as necessary, to residents in achieving and maintaining good personal hygiene, including such assistance with:

a. Washing and bathing the body;

b. Shaving;

c. Washing, grooming and cutting hair;

d. Cleaning the mouth and teeth; and

e. Cleaning of finger and toe nails.

6. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

(d) Intermediate care facilities.

1. Each facility does not maintain a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

a. Positioning and turning;

b. Exercises;

c. Bowel and bladder training, when appropriate; and

d. Ambulation.

2. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. The facility does not maintain a program to provide encouragement and assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

- a. Washing and bathing the body;
- b. Shaving;
- c. Cleaning of finger and toe nails;
- d. Cleaning of mouth and teeth; and
- e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. All employees do not receive orientation and in-service training to correspond to their respective jobs; nursing personnel do not participate in in-service training or continuing education at least quarterly.

6. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

(e) Nursing homes.

1. The facility does not include a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

- a. Positioning and turning;
- b. Exercises;
- c. Bowel and bladder training, when appropriate; and
- d. Ambulation.

2. Each patient shall be provided a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable.

3. Each facility does not maintain a program to provide assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

- a. Washing and bathing the body;
- b. Shaving;
- c. Cleaning of finger and toe nails;
- d. Cleaning of mouth and teeth; and
- e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. The facility does not maintain and implement a schedule of activities for groups and individuals, both within and without the facility.

6. All employees do not receive orientation and in-service training to correspond to their respective jobs; nursing personnel do not participate in in-service training or continuing education at least quarterly.

(f) Skilled nursing facilities.

1. The facility does not maintain a program of rehabilitative nursing care on a twenty-four (24) hour a day, seven (7) day a week basis, which program to include at least the following measures:

- a. Positioning and turning;
- b. Exercises;
- c. Bowel and bladder training, when appropriate; and
- d. Ambulation.

2. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required

to keep the patient comfortable.

3. The facility does not maintain a program to provide assistance to patients to achieve and maintain good personal hygiene, including, as necessary, the following:

- a. Washing and bathing the body;
- b. Shaving;
- c. Cleaning of finger and toe nails;
- d. Cleaning of mouth and teeth; and
- e. Washing, grooming and cutting of hair.

4. If any food service personnel are assigned duties outside the dietary department, the duties interfere with the sanitation, safety or time required for regular dietary assignments.

5. The facility does not maintain and implement a schedule of activities for groups and individuals, consistent with the requirements of 902 KAR 20:026, Section 4(9).

6. The licensee does not provide in-service training to its personnel in accordance with the requirements of 902 KAR 20:026, Section 3(8)(e).

(g) Intermediate care facilities for the mentally retarded and developmentally disabled.

1. Within one (1) month after the admission of each resident, the facility does not enter the following in the resident's record:

- a. A report of the review and updating of the preadmission updating.
- b. A prognosis that can be used in programming and placement;
- c. A comprehensive evaluation and individual program plan designed by an interdisciplinary team.

2. The facility does not assure that:

a. Each resident who does not eliminate appropriately and independently must be in a regular systematic toilet training program and a record must be kept of his progress in the program; and

b. Any resident who is incontinent is bathed or cleaned immediately upon voiding or soiling unless specifically contraindicated by the training program, and all soiled items are changed.

3. The facility does not maintain and implement a schedule of activities for groups and individuals, consistent with requirements of 902 KAR 20:086, Section 4(9), (10).

4. The facility does not maintain an orientation and in-service training program which is consistent with the requirements of 902 KAR 20:086, Section 3(11)(n).

5. The facility does not provide each patient with a standard size bed equipped with springs, a clean mattress, mattress cover, two (2) sheets and a pillow and such bed covering as required to keep the patient comfortable. Rubber or other impervious sheets shall be placed over the mattress cover when necessary.

Section 8. Civil penalties assessed for "Type A" and "Type B" violations pursuant to KRS 216.557 shall be trebled when a licensee has received a citation for violating a requirement for which it has received a citation and paid a fine during the previous twelve (12) months.

Section 9. (1) In determining the amount of any penalty imposed for "Type A" and "Type B" violations, the cabinet shall consider at least the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or mental harm to a resident will result or has resulted; the severity of the actual or

potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(b) The reasonable diligence exercised by the licensee and efforts to correct violations;

(c) The number and type of previous violations committed by the licensee; and

(d) The amount of assessment necessary to insure immediate and continued compliance

(2) All fines collected by the cabinet shall be paid and administered in accordance with the requirements of KRS 216.560.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation

with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES Department for Health Services (Proposed Amendment)

901 KAR 5:031. Definitions: live birth, fetal death, induced termination of pregnancy and reportable events [Reporting of termination of pregnancies; live births].

RELATES TO: KRS Chapter 213

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: KRS Chapter 213 relating to Vital Statistics authorizes the Cabinet for Human Resources to regulate the registration of all births and deaths in Kentucky. The purpose of this regulation is to define, and differentiate between death following a live birth; a fetal death or stillbirth; and an induced termination of pregnancy [abortion after the first trimester, in order to insure the uniform reporting of all such terminations of pregnancy].

Section 1. Definitions. As used in this regulation:

(1) "Live birth" means the complete expulsion or extraction of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life such as the beating of the heart, pulsation of the umbilical cord, or definite movement of the voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(2) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy. Fetal death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as the beating of the heart, the pulsation of the umbilical cord, or definite movement of the voluntary muscles. An induced termination of pregnancy shall not be considered a fetal death for purposes of this regulation.

(3) "Induced termination of pregnancy" means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth. This definition shall exclude management of prolonged retention of product of conception following fetal death. ["Abortion" shall have the meaning as set forth in KRS 311.720(1).]

Section 2. Live Birth Registration. Every live birth which occurs in this state shall be registered on a certificate of live birth in accordance with KRS [Chapter] 213.050, irrespective of the weight of the fetus or the time of gestation. If the fetus subsequently dies, regardless of the time interval between birth and death, the death shall be recorded on a certificate of death.

Section 3. Fetal Death Registration. Each [spontaneous] fetal death in which the fetus weighs 350 grams or more or has a gestational age of twenty (20) weeks or more as estimated by the attendant [measured from the beginning of the mother's last menstrual period] shall be reported on a report [certificate] of fetal death. This report [certificate] shall be completed and filed with the local registrar within ten (10) days following the date of delivery. The report [certificate] of fetal death shall not be used to report induced terminations of pregnancy, i.e., abortions as defined by KRS 311.720(1).

[Section 4. Abortion Reporting After First Trimester. Every abortion performed in this state after the first trimester shall be reported on a form provided by the Cabinet for Human Resources in accordance with the provisions of KRS 213.055.]

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 4, 1989

FILED WITH LRC: October 9, 1989 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Hurst III

(1) Type and number of entities affected: May affect any health facility, physician or persons involved in the delivery or management of pregnancies. This amendment provides for clarification of definitions of reportable events.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Eliminates confusion in reporting events.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Standard medical definitions are used.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict, duplication or overlapping exists.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: TIERING: Was tiering applied? No. Applies equally to all entities.

CABINET FOR HUMAN RESOURCES Department for Health Services (Proposed Amendment)

901 KAR 5:040. Verification of birth and death facts.

RELATES TO: KRS Chapter 213

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: KRS Chapter 213 relating to Vital Statistics authorizes the Cabinet for Human Resources to regulate the registration of births and deaths in Kentucky. This regulation authorizes the verification of certain items or facts appearing on birth and death certificates without charge where certified copies are not required.

Section 1. Verification of Certain Facts Appearing on Birth and Death Certificates. The Director of Vital Statistics of the Cabinet for Human Resources may issue a card or statement verifying certain items or facts appearing on birth and death certificates to governmental agencies without charge where certified copies are not required.

Section 2. Local registrars of vital statistics may issue verifications of births [and deaths] without charge where certified copies are not required, [provided the applicant has a direct, tangible, legitimate interest in the information requested. For the purpose of this regulation, the following persons are deemed to have such an interest:]

[(1) Person named in certificate;]

[(2) Spouse;]

[(3) Next of kin;]

[(4) Funeral director or other person responsible for final disposition of the body; and]

[(5) Governmental agencies for official purposes.]

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 4, 1989

FILED WITH LRC: October 9, 1989 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert N. Hurst III

(1) Type and number of entities affected: Will affect persons requesting verifications of birth information. Removes qualifications for requesting information based upon Attorney

General's Opinion.

(a) Direct and indirect costs or savings to those affected:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: No effects on promulgating administrative body.

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available. Legal opinion requires compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Change in regulation was required due to Attorney General's opinion.

(a) Necessity of proposed regulation if in conflict: Change in regulation was required due to Attorney General's opinion.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes. Proposed 1990 legislation will eliminate conflict.

(6) Any additional information or comments: No additional comments.

TIERING: Was tiering applied? No. Regulation applies to all local registrars and persons requesting information.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

901 KAR 5:070. Certificate of birth amended.

RELATES TO: KRS Chapter 213

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: KRS Chapter 213 relating to Vital Statistics authorizes the Cabinet for Human Resources to regulate the registration of births in Kentucky. The purpose of this regulation is to provide for uniform procedures for changing birth certificates of children born out of wedlock where a paternity affidavit is executed or where paternity is established by law.

Section 1. Paternity Affidavits. Paternity affidavits executed in accordance with KRS 213.050(1) shall be on a special declaration of paternity form provided by the cabinet and shall be signed by both natural parents.

Section 2. Amendment or Issuance of New Certificate. When paternity has been established for a child born out of wedlock in Kentucky. [Where an illegitimate child born in Kentucky has been legitimated as provided by law or paternity established as provided by law,] the Director of Vital Statistics shall [may] amend the original certificate of birth or prepare a new certificate of birth.

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 4, 1989

FILED WITH LRC: October 9, 1989 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert Hurst III

(1) Type and number of entities affected: Affects those individuals born out of wedlock where paternity is established after filing of the birth certificate.

(a) Direct and indirect costs or savings to those affected:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: No effects on promulgating administrative body.

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available. Statute mandates compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict, duplication or overlapping exists.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: No additional information.

TIERING: Was tiering applied? No. Regulation applies to all persons equally.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

901 KAR 5:080. Delayed registration of deaths.

RELATES TO: KRS Chapter 213

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: KRS Chapter 213 relating to Vital Statistics authorizes the Cabinet for Human Resources to register a delayed certificate of death. The purpose of this regulation is to provide a uniform procedure for registering deaths which were not reported at the time of death in accordance with

KRS 213.110(3).

Section 1. Delayed Registration of Deaths. The registration of a death after the time prescribed by KRS 213.110(3) shall be registered on the standard certificate of death form in the manner prescribed below:

(1) If the attending physician, medical examiner or coroner at the time of death and the attending funeral director or person who acted as such are available to complete and sign the certificate of death, it may be completed without additional evidence and filed with the State Registrar of Vital Statistics. However, certificates of death filed with the State Registrar of Vital Statistics one (1) year or more after the date of death shall be signed by the attending physician, medical examiner or coroner and the funeral director or person acting as such and shall be accompanied by one (1) item of documentary evidence as specified in subsection (4) of this section. [for those certificates filed one (1) year or more after the date of death, the physician, medical examiner or coroner and the funeral director or person who acted as such must file accompanying affidavits.]

(2) In the absence of the attending physician, medical examiner or coroner and the funeral director or person who acted as such, the certificate may be filed by the next of kin of the deceased and shall be accompanied by:

(a) An affidavit of the person filing the certificate swearing to the accuracy of the information on the certificate; and

(b) Two (2) documents which identify the deceased and the [his] date and place of death.

(3) In the case of presumptive death, a certified copy of a court order finding that such death has occurred and the date and place of such death shall [must] be received by the State Registrar of Vital Statistics before a death certificate can be filed.

(4) In all cases, the State Registrar of Vital Statistics may require additional documentary evidence to prove the facts of death. Items of documentary evidence may be the obituary from a newspaper, or records from a funeral home showing services rendered decedent, or a medical record.

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 4, 1989

FILED WITH LRC: October 9, 1989 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert N. Hurst III

(1) Type and number of entities affected: Entities affected are physicians, medical examiner, coroners, funeral directors and others filing delayed death certificates.

(a) Direct and indirect costs or savings to

those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: Provides conclusive evidence of the event.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative not considered. Regulation allows for standardize evidence of the event.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Applies to all entities equally.

CABINET FOR HUMAN RESOURCES Department for Health Services (Proposed Amendment)

901 KAR 5:090. Burial, transportation and disinterment of dead bodies.

RELATES TO: KRS Chapter 213

STATUTORY AUTHORITY: KRS 194.050, 211.090, 213.100, 213.110

NECESSITY AND FUNCTION: KRS Chapter 213, relating to vital statistics, authorizes the Cabinet for Human Resources to regulate the transportation, disposal, and disinterment of dead bodies. The purpose of this regulation is to establish uniform requirements for the transportation, interment, disinterment and reburial of dead bodies in Kentucky.

Section 1. Burial Transit Permits (Provisional Report of Death). (1) In accordance with KRS 213.100 and 213.110, the funeral director, or person acting as such, shall procure a burial-transit permit from the local registrar of vital statistics of the county where death occurred, prior to removal or disposition of the body. The permit shall grant permission for the transportation and burial or other disposition of the body. In the event the body is to be shipped by common carrier the local registrar shall issue the permit in duplicate and a copy shall accompany the body.

(2) A burial-transit permit issued by the appropriate authority of another state accompanying a body shipped into Kentucky and a local burial permit issued by the local registrar shall be deemed permission for burial in this state. Such permit shall be signed by the sexton or other authorized official of the cemetery after burial and shall be filed with the local registrar of the county in which

burial occurs.

(3) In the event a body is to be cremated, the funeral director, or person acting as such, shall so inform the local registrar of the county where death occurred, who shall obtain the approval of the coroner on the burial-transit permit as a condition precedent to issuing it as required by KRS 213.125. The funeral director, or person acting as such, shall deliver a copy of the permit bearing the coroner's approval to the crematorium. The person in charge of the crematorium shall sign the permit in the space provided for the sexton's signature after the body is cremated and shall file the permit with the local registrar for the county in which the death occurred [cremation occurs]. No permit shall be required for the transportation or disposal of the cremated remains.

Section 2. Interment. (1) Where the disposition of the body is by burial and the outer container for the body is made of concrete, metal, fiber glass, or other impervious material and it is hermetically sealed, all parts of such container shall be buried to a depth of at least two (2) feet below the level of the natural surface of the ground. All other burials shall be at least three (3) feet below the level of the natural surface of the ground measured from all parts of the outer container.

(2) Where impenetrable rock is encountered the local health department may, upon proper application, grant a variance to the depth of burial requirements of this regulation.

(3) The depth of burial requirements of this regulation do not apply where interment is in a mausoleum.

Section 3. Disinterment. (1) When one (1) or more bodies are to be disinterred for reburial in the same cemetery, a disinterment-reinterment permit shall be procured upon proper application from the local registrar.

(2) When one (1) or more bodies are to be disinterred for reburial in a different cemetery or for other disposal, an application for a disinterment-reinterment permit shall be made to the State Registrar of Vital Statistics. The application shall contain the following information:

- (a) Name of deceased, if known;
- (b) Date of death;
- (c) Original grave site;
- (d) Proposed grave site;
- (e) Approximate date of removal;
- (f) Name of the person or firm who will remove the body or bodies;

(g) A statement by the applicant that he has made, or will make, a reasonable effort to contact and obtain written permission from the next-of-kin for the removal of the remains; and

(h) A statement by the applicant that he is familiar with and will abide by all applicable laws, regulations, and policies relating to the establishment and abandonment of cemeteries and the custody, handling, and disposal of human remains.

Section 4. Reburial. (1) All disinterred human remains intended for reburial, and all other contents of the grave, shall be enclosed in a container constructed of strong material and of sufficient size to hold the remains without

altering their shape or size. In the event the human remains are not thoroughly decomposed the container shall be sealed to prevent the escape of liquids or gas.

(2) The depth of burial requirements of Section 2 of this regulation shall apply to all reburials except that human remains which are thoroughly decomposed need be reburied only to such a depth so that no part of the container is less than two (2) feet below the natural surface of the ground.

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 4, 1989

FILED WITH LRC: October 9, 1989 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert N. Hurst III

(1) Type and number of entities affected: Affects those persons requesting permission to bury out of state decedents in Kentucky and provides local registrar notice of burial.

(a) Direct and indirect costs or savings to those affected: No additional costs or savings involved. Burial transit permits are required on all burials in Kentucky and are filed with local registrars with no fee involved.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Minimal increase in paperwork. Require one permit for burial of out-of-state decedent.

(2) Effects on the promulgating administrative body: No effects on promulgating administrative body. All burial transit permits are filed with local registrar.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effects on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered due to statutory requirement that each burial be accompanied by a burial transit permit.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict or overlapping of statute, regulation or policy.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: No additional information.

TIERING: Was tiering applied? No. Requirement applies to all out-of-state deaths requesting burial in Kentucky.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

901 KAR 5:100. Cadavers.

RELATES TO: KRS Chapter 213

STATUTORY AUTHORITY: KRS 194.050, 211.090, 311.310, 311.165 to 311.247

NECESSITY AND FUNCTION: KRS Chapter 213, relating to Vital Statistics, authorizes the Cabinet for Human Resources to regulate the transportation, disposal and interment of dead bodies and the use of dead bodies or parts thereof for educational and scientific purposes. The purpose of this regulation is to regulate, except as otherwise provided by law, the transportation, use, disposal and interment of dead bodies brought into this state from another state for educational or scientific purposes.

Section 1. Approval Required for Importation of Dead Body Into State for Educational or Scientific Purposes; Exceptions. (1) Except as otherwise authorized by subsection (6) of this section, no person shall transport into this state, a dead body or part thereof, for educational or scientific purposes without first obtaining the prior approval of the Cabinet for Human Resources.

(2) An applicant desiring to transport a dead body or part thereof into this state for educational or scientific purposes shall file a notarized application with the cabinet setting forth the proposed use, need, qualifications of personnel and adequacy of equipment and facilities.

(3) Upon receipt of the notarized application the cabinet shall cause an investigation to be made to determine the proposed use, need, qualifications of personnel and the adequacy of equipment and facilities.

(4) The Secretary for Human Resources shall, on the basis of his investigation, either grant or deny the application. In the event the application is approved, the secretary shall in accordance with KRS 311.310 require the applicant to post a bond in the sum of \$1,000 conditioned upon compliance with the terms of this regulation and the lawful use and disposition of any dead bodies or parts thereof that may be received by the applicant.

(5) After the use of the dead bodies or parts thereof has been completed as approved by the cabinet, such bodies or parts thereof shall be disposed of as set forth in the approved application, or as otherwise authorized by law. A special transit permit shall be obtained for the transportation of such dead bodies or parts thereof from the Cabinet for Human Resources.

(6) This regulation shall not restrict the importation and use of dead bodies for educational or scientific purposes by any state publicly funded, accredited medical school located in Kentucky, nor the importation and use of any dead body or part thereof, the donation of which was made pursuant to the Kentucky Uniform Anatomical Gift Act, KRS 311.165 to

311.247 [235], or as may be otherwise authorized by law.

Section 2. Facility Requirements. An applicant for approval to import a dead body into this state for educational or scientific purposes shall meet the following facility requirements:

(1) Comply with applicable state and local fire safety, housing and plumbing codes as evidenced by written approvals from appropriate governmental agencies;

(2) Maintain all facilities in a sanitary condition;

(3) Maintain strict rules of privacy and allow no one in the area in which a dead human body is being dissected or stored except for faculty and duly registered students of the facility or authorized personnel;

(4) Store all cadavers by use of one (1) of the following methods:

(a) In covered vats or tanks submersed in a preservative acceptable to the cabinet;

(b) Wrapped in gauze or similar material, after embalming, soaked with formalin or other acceptable preservative, and stored in a morgue type refrigeration unit or equivalent with a temperature range of thirty-eight (38) to forty (40) degrees Fahrenheit.

(c) Enclosed in sealed plastic bags, after embalming; or

(d) By other means which would be acceptable to the cabinet.

(5) Provide outside ventilation, including continuous air changes and mechanical power to provide sufficient air movement to rooms housing cadaver storage vents, tanks or refrigeration units;

(6) Provide security to all storage areas at all times;

(7) Provide a dissection area that shall contain:

(a) A minimum of 100 square feet of floor area with a minimum room area of 180 square feet, exclusive of cadaver storage space;

(b) Flooring constructed of terrazzo, tile, concrete or other waterproof or impervious material from wall to wall;

(c) Dissection table with stainless steel top with rolled edge and drainage;

(d) Ventilation to outside of building with mechanical power sufficient to provide adequate air movement;

(e) Lighting at the table level of not less than 1,000 foot candles;

(f) Adequate electrical outlets including outlets in proximity to dissection table;

(g) Slop sink with running water and adequate drainage;

(h) Storage area for supplies and equipment;

(i) Work counter with sink equipped for hand washing; and

(j) Sanitary waste receptacle.

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 4, 1989

FILED WITH LRC: October 9, 1989 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989 of their desire to appear and testify at the

hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert N. Hurst III

(1) Type and number of entities affected: Cites statutory authority for carrying out the provisions of this regulation. Regulation affects hospitals, universities and medical schools.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: No change.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None considered. Regulations require complete citings of statutory authority.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Applies equally to all entities.

CABINET FOR HUMAN RESOURCES Department for Health Services (Proposed Amendment)

902 KAR 7:010. Hotel and motel code.

RELATES TO: KRS 219.011 to 219.081, 219.991(1)

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: KRS 219.011 TO 219.081 and 219.991(1) directs the Human Resources Cabinet to regulate hotels. KRS 219.041(3) directs the Human Resources Cabinet to adopt a State Hotel Code, which includes, among other things, requirements for the issuance, suspension and revocation of permits to operate; submission of plans for construction and equipment layout; plumbing; lighting; ventilation; water supply; sewage disposal; sanitary standards for operation; and other matters deemed necessary to insure a safe and sanitary operation of a hotel.

Section 1. Citation of Regulation. This regulation may be cited as the "State Hotel Code."

Section 2. Definitions. As used in this regulation:

[(1) "Cabinet" means the Human Resources Cabinet and includes the local health department having jurisdiction and their duly designated representatives.]

[(1) [(2)] "Employee" means any person working in a hotel, including janitors, maids, porters, and other persons whose duties include the cleaning of rooms, toilets, or other parts of the building or the carrying of ice or ice water to guests.

[(3) "Hotel" means every building or structure kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public, and includes motels, tourist homes and similar establishments, but excludes boarding houses and rooming houses.]

[(2) [(4)] "Ice dispensing machine" means any self-service or semiself-service machine operated by a mechanism which, upon insertion of a coin, coins, or tokens, or by other devices such as levers or switches, dispenses ice either in bulk or in package form.

[(3) [(5)] "Public rest room" means any facility that provides toilet and hand-washing facilities for the general public.

[(4) [(6)] "Self-service ice storage bin" means a self-service machine or storage bin in which ice is manufactured or stored in bulk form and the ice removed by the hotel guest through use of an ice scoop or other similar device.

Section 3. Application for a Permit. (1) Application for a permit required by KRS 219.021 shall be made on forms provided by the cabinet [department] and include:

(a) Applicant's full name and address and indicate whether the applicant is an individual, firm or corporation;

(b) If a partnership, the names of the partners, with their addresses;

(c) The location of the hotel; and

(d) The signature of the applicant or applicants.

(2) Upon receipt of an application the cabinet [department] shall make an inspection of the hotel to determine compliance with the provisions of this regulation. When inspection reveals that the applicable requirements of this regulation have been met, a permit shall be issued to the applicant by the cabinet [department].

Section 4. Hotel Water Supply and Ice. (1) The water supply shall be potable, adequate and from an approved public supply of a municipality or water district, if available. In the event a public water supply of a municipality or a water district is not available, the supply for a hotel shall be developed and approved in accordance with applicable requirements of the Natural Resources and Environmental Protection Cabinet; provided, however, if a public water supply of a municipality or water district subsequently becomes available, connections shall be made thereto and the hotel supply shall be discontinued.

(2) Hot and cold running water under pressure shall be provided in all bathrooms and toilet rooms.

(3) Ice used for any purpose shall be made from water which comes from an approved source, and shall be used only if it has been manufactured, stored, transported, and handled in a sanitary manner.

(4) Self-service ice provided for the hotel guest shall be dispensed through use of ice dispensing machines or prepackaged for individual hotel guests from an approved source in all new hotels constructed after the effective date of this regulation; provided, however, that ice making equipment located in individual rooms shall not be prohibited. Self-service ice storage bins presently being used may be continued in use provided that the machines are maintained in good repair and capable of being properly cleaned. In all cases where the replacement of a self-service ice storage bin becomes necessary, or additional machines added, an ice dispensing machine shall be installed.

Section 5. Hotel Sewage and Waste Disposal. All sewage and waste matter shall be disposed of into a public sewerage system, if available. In the event a public sewerage system is not available, disposal shall be made into a private system designed, constructed and operated in accordance with the requirements of the cabinet; provided, however, if a public sewerage system subsequently becomes available, connections shall be made thereto and the hotel sewerage system shall be discontinued.

Section 6. Toilet and Bathing Facilities. (1) Each hotel shall be provided with adequate and conveniently located toilet and bathing facilities. Except as provided by KRS 219.021(3) for existing hotels, toilet and bathing facilities shall be provided for each sleeping room in accordance with the requirements of the State Building Code. Toilet and bathing fixtures shall be of a sanitary design and readily cleanable. Toilets and bathing facilities, including rooms and fixtures, shall be kept in a clean condition and in good repair. Toilet tissue shall be provided. Easily cleanable receptacles shall be provided for waste materials, and such receptacles in public toilet rooms for women shall be covered. Public rest room facilities for both sexes shall be provided when required by the State Building Code [at a central location] in all new hotels constructed after the effective date of this regulation. The doors of all public rest rooms shall be self-closing.

(2) Each hotel shall provide adequate, conveniently located hand-washing facilities at each toilet and bathroom including a lavatory or lavatories equipped with hot and cold or tempered running water, hand-cleansing soap and approved sanitary towels or other approved hand-drying devices. Such facilities shall be kept clean and in good repair.

(3) All plumbing in hotels shall comply with the state plumbing code.

Section 7. Storage, Collection and Disposal of Hotel Refuse. (1) All containers used in guest rooms, lobbies, hallways and public assembly rooms for storage of refuse and rubbish containing food waste shall be constructed of durable metal or other approved types of materials, which do not leak and do not absorb liquids. Such containers shall be thoroughly cleaned on the inside and outside each time they are emptied unless liners are used.

(2) All outside storage containers shall be constructed of durable metal or other approved types of materials, which do not leak and do not

absorb liquids, and shall be provided with tight fitting lids or covers and shall, unless kept in a special vermin-proof room or enclosure, be kept covered when stored. Each storage container shall be cleaned at such frequency as to prevent a nuisance.

(3) The rooms, enclosures, areas and containers shall be adequate for storage of all refuse accumulating on the premises. Adequate cleaning facilities shall be provided and each storage room or area shall be thoroughly cleaned after the emptying or removal of refuse.

(4) All refuse and waste collected at a hotel shall be disposed of in a safe and sanitary manner. In the event a permitted site or facility approved by the Natural Resources and Environmental Protection Cabinet is available, disposal shall be at such site or facility.

Section 8. Room Construction and Layout. (1) All structures used as hotels shall be of permanent, weatherproof construction with sound floors, walls and ceilings.

(2) All habitable rooms, bathrooms, and halls shall have adequate lighting, ventilation and heating.

(a) The heating system shall be capable of maintaining a temperature of sixty-eight (68) degrees Fahrenheit.

(b) Natural and artificial lighting for general cleaning purposes and safety of guests shall be at least five (5) foot-candles in guest rooms, stairways and hallways.

(c) Lighting in reading areas of guest rooms and public meeting rooms shall be thirty (30) foot-candles.

(d) Lighting at bathroom mirrors shall be forty (40) foot-candles.

(3) Sleeping rooms shall have at least one (1) window to the outside air which can be easily opened unless other openings or mechanical devices are used for room ventilation. All sleeping rooms shall have a door opening directly to the outside or into a hallway leading to the outside.

Section 9. Soap, Towels, Washcloths, Drinking Glasses and Ice Containers. (1) Rooms used for sleeping purposes shall be provided with soap, towels, washcloths and drinking glasses.

(a) Two (2) clean towels and one (1) clean washcloth of adequate size shall be provided for each occupant.

(b) One (1) multiuse drinking glass or individual single-service cup shall be provided for each occupant.

(2) Ice storage containers, scoops and drinking glasses, unless they are of the single-service type, shall be smooth, impervious material and designed to facilitate cleaning, and shall be stored, handled and dispensed in a sanitary manner.

(3) Multiuse drinking glasses and ice containers shall be washed and sanitized according to procedures as set forth in the state food service code.

(4) Hotels which do not have adequate and effective facilities for cleaning and sanitizing multiuse drinking glasses and ice containers shall use single-service articles. All single-service articles shall be stored, handled and dispensed in a sanitary manner and shall be used only once. Single-service articles shall be made from nontoxic materials.

(5) Multiuse drinking glasses or

single-service containers placed in sleeping rooms shall be individually wrapped or stored on a clean surface in an inverted position.

Section 10. Hotel Beds and Bedding Accessories. Mattress pads or covers shall be used on all mattresses. Beds, mattresses, springs, slats, mattress pads and covers shall be clean and free from vermin. Each bed shall be provided with two (2) sheets; and one (1) pillow and one (1) pillow case for each occupant. Sheets and pillow cases shall be kept clean and changed at least once per week or more often if necessary or when there is a new occupant. All beds shall be supplied with sufficient blankets or coverings to keep the occupant warm.

Section 11. Maintenance of Rooms, Furniture and Accessories. All sleeping rooms, hallways, lobbies and other facilities shall be kept clean and in good repair. Furniture, drapes, curtains and shades shall be kept clean and in good repair.

Section 12. Linen Storage. Adequate storage areas, rooms or cabinets shall be provided for all supplies, linens and equipment, and shall be kept neat, orderly and clean. Clean linens shall be stored in cabinets or on shelves in a linen storage room. Soiled linens shall be so handled and stored as not to come in contact with clean linens.

Section 13. Vermin Control. Effective measures shall be taken to control vermin and other pests including their entrance into the hotel.

Section 14. Poisonous and Toxic Materials. Only such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitization purposes may be used or stored in hotels. Such materials shall be properly stored and identified and shall be used only in such manner and under such conditions as will not constitute a hazard to employees or customers.

Section 15. Hotel Swimming Facilities. Any swimming or bathing facility [pool] provided for use by hotel occupants shall be constructed and operated in accordance with the State Building Code and the Kentucky public swimming and bathing facilities regulation [regulations of the Natural Resources and Environmental Protection Cabinet].

Section 16. Hotel Personnel. (1) No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores or an acute respiratory infection, shall work in any area of a hotel in any capacity in which there is a likelihood of such a person contaminating bedding, and other surfaces with pathogenic organisms, or transmitting disease to other individuals, and no person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the hotel has reason to suspect that any employee has contracted any disease in communicable form or has become a carrier of such a disease, he shall notify the cabinet immediately.

(2) All employees shall wear clean outer garments, maintain a high degree of personal

cleanliness, and conform to hygienic practices while on duty. They shall wash their hands thoroughly in an approved hand-washing facility before starting work, and as often as may be necessary to remove soil and contamination. No employee shall resume work after visiting the toilet without first washing his hands.

Section 17. Procedure when Infection is Suspected. When the cabinet has reasonable cause to suspect the possibility of disease transmission from any hotel employee, the cabinet shall secure a morbidity history of the suspected employee, or make such other investigation as may be indicated and take appropriate action. The cabinet may require any or all of the following measures:

(1) The immediate exclusion of the employee from the hotel;

(2) Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease; and

(3) Require adequate medical and laboratory examinations of the employee, of other employees, and of his and their body discharges.

Section 18. Plan Review of Future Construction. No person shall construct or extensively alter a hotel, or convert an existing structure for use as a hotel, until properly prepared plans and specifications for such construction or alteration, showing layout, arrangements, and construction materials, and the location, size and type of fixed equipment and facilities and a plumbing riser diagram, have been submitted to and approved by the cabinet before such work is begun. If the construction plans are not acceptable, the cabinet shall give the reason therefor in writing to the person submitting the construction plans and, if the objection can be corrected, the plans can be resubmitted for another review.

Section 19. Inspection of Hotels. (1) At least once every twelve (12) months, the cabinet shall inspect each hotel and shall make additional inspections and reinspections as are necessary for the enforcement of this regulation.

(2) Whenever an agent of the cabinet makes an inspection of a hotel, he shall record his findings on an official cabinet inspection report form and provide the permit holder or operator with a copy. The inspection report shall:

(a) Set forth the specific violations(s) found;

(b) Establish a specific and reasonable period of time for the correction of the violation(s) found; and

(c) State that failure to comply with any notice issued in accordance with the provisions of this regulation may result in suspension of the permit.

Section 20. Suspension of Permit. (1) Whenever the cabinet has reason to believe that an imminent public health hazard exists, or whenever the permit holder has interfered with the authorized agents of the cabinet in the performance of their duties, the permit may be suspended immediately upon notice to the permit holder without a hearing. In such event the permit holder may request a hearing which shall be granted as soon as practicable.

(2) In all other instances of violation of the

provisions of this regulation the cabinet shall serve upon the holder of the permit a written notice specifying the violation(s) in question and afford the holder a reasonable opportunity to correct same. Whenever a permit holder or operator has failed to comply with any written notice issued under the provisions of this regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the permit holder within such ten (10) day period.

(3) The hearings provided for in this regulation shall be conducted by the cabinet at a time and place designated by it. At the conclusion of the hearing, the cabinet shall make a finding of fact and conclusion of the law. A transcript of the hearing need not be made unless the interested party assumes the costs thereof and a request is made therefor at the time a hearing is requested.

Section 21. Reinstatement of Suspended Permits. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is found to be in compliance with the requirements of this regulation, the permit shall be reinstated.

Section 22. Revocation of Permits. For serious or repeated violations of any of the requirements of this regulation or for interference with the agents of the cabinet in the performance of their duties, the permit may be permanently revoked after an opportunity for a hearing has been provided by the cabinet. Prior to such action, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of such notice, unless a request for a hearing is filed with the cabinet, by the permit holder, within such ten (10) day period.

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 9, 1989 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. James Corum

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: No change.
2. Continuing costs or savings: No change.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No change.
- (b) Reporting and paperwork requirements: No change.
- (2) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: No change.
 2. Continuing costs or savings: No change.
 3. Additional factors increasing or decreasing costs: No change.
 - (b) Reporting and paperwork requirements: No change.
 - (3) Assessment of anticipated effect on state and local revenues: No change.
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: No true alternatives; updating and editorial changes only.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: State Building Code, State Plumbing Code.

(a) Necessity of proposed regulation if in conflict: Conflict existed prior to proposed amendments.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Proposed amendments remove conflicts.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Existing regulation included tiering relative to existing facilities, equipment - such tiering is continued in amendment document.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No Only peripheral involvement with local building inspector or local planning and zoning. Local health department involvement as agent of the cabinet.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. See above.

3. State the aspect or service of local government to which this administrative regulation relates. Inspection/codes enforcement by local building inspector and local health department.

4. How does this administrative regulation affect the local government or any service it provides? Supports building codes. Supports service provision to hotel and motel facilities by local health departments acting as agents of the cabinet.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:009. Facility specifications; hospitals.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040],

216B.105[(3)]

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105[(3)] mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides [for the] licensure requirements for the structural specifications and plant requirements for new construction and alteration and maintenance of hospital facilities. Hospital facilities licensed prior to the effective date of this regulation shall meet the structural specifications in force on the date of their most recent licensure inspection.

Section 1. Definitions. (1) "Board" means the Commission for Health Economics Control in Kentucky [Health Facilities and Health Services Certificate of Need and Licensure Board].

[(2) "Certificate of need" means an authorization by the board to proceed with any acquisition, initiation, construction or expansion pursuant to KRS Chapter 216B.]

(2) [(3)] "License" means an authorization issued by the board for the purpose of operating a hospital facility.

[(3) [(4)] "Licensure agency" means the Division for Licensing and Regulation in the office of the Inspector General, Cabinet for Human Resources.

Section 2. Preparation and Approval of Plans and Specifications. After receiving a certificate of need from the board, the following procedures shall be followed:

(1) Before construction is begun for the erection of new buildings or alterations to existing buildings or any change in facilities for a hospital, the licensee or applicant shall submit plans to the licensure agency for approval.

(2) All architectural, mechanical and electrical drawings shall bear the seal of an architect registered in the Commonwealth of Kentucky or the seal of a professional engineer registered in the Commonwealth of Kentucky, or both.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) All such plans and specifications must be approved by the licensure agency prior to commencement of construction of new buildings or alterations of existing buildings.

(5) Plans and specifications in specific detail as required by the Kentucky Building Code shall be submitted, together with architectural and/or engineering stamps as required by KRS Chapters 322 and 323, to the Department of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. All such plans and specifications must be approved by the Department of Housing, Buildings and Construction. Appropriate local building permits shall be obtained prior to commencement of construction.

Section 3. Submission of Plans and Specifications for Hospitals. (1) First stage, schematic plans.

(a) Single line drawings of each floor shall show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room shall be noted. Drawings shall include

typical patient room layouts scaled (one-half (1/2) inch = one (1) foot) with dimensions noted. The proposed roads and walks, service and entrance courts, parking and orientation shall be shown in a plot plan.

(b) If the project is an addition, or is otherwise related to existing buildings on the site, plans shall show the facilities and general arrangements of those buildings.

(2) Second stage, preliminary plans. Preliminary sketch plans shall include the following:

(a) Architectural.

1. Plans of basement, floors and roof showing space assignment, sizes, and outline of fixed and movable equipment;

2. All elevators and typical sections;

3. Plot plan showing roads, parking, and sidewalks;

4. Areas and bed capacities by floors.

(b) Mechanical.

1. Single line layout of all duct and piping systems;

2. Riser diagrams for multistory construction;

3. Scale layout of boilers and major associated equipment and central heating, cooling, and ventilating units.

(c) Electrical.

1. Plans showing space assignments, sizes and outlines of fixed equipment such as transformers, main switch and switchboards, and generator sets;

2. Simple riser diagram for multistory building construction, showing arrangement of feeders, subfeeders, bus work, load centers, and branch circuit panels.

(d) Outline specifications.

1. General description of the construction, including interior finishes, types and locations of acoustical material, and special floor covering;

2. Description of the air-conditioning, heating, and ventilation systems and their controls; duct and piping systems; and dietary, laundry, sterilizing and other special equipment;

3. General description of electrical service including voltage, number of feeders, and whether feeders are overhead or underground.

(3) Third stage, contract documents.

(a) Working drawings. Working drawings shall be complete and adequate for bid, contract, and construction purposes. Drawings shall be prepared for each of the following branches of the work: architectural, structural, mechanical, and electrical. They shall include the following:

1. Architectural drawings.

a. Approach plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new building structures, roadways, walks, and parking areas;

b. Plan of each basement, floor, and roof;

c. Elevations of each facade;

d. Sections through building;

e. Required scale and full-size details;

f. Schedule of doors, windows, and room finishes;

g. Layout of typical and special rooms indicating all fixed equipment and major items of movable equipment. Equipment not included in contract shall be so indicated;

h. Conveying systems. Details of construction, machine and control spaces necessary, size and type of equipment, and utility requirements for the following: dumbwaiters: electric, hand, hydraulic; elevators: freight, passenger,

patient; loading dock devices; pneumatic tube systems.

2. Structural drawings.

a. Plans for foundations, floors, roofs, and all intermediate levels with sizes, sections, and the relative location of the various structural members;

b. Dimensions of special openings;

c. Details of all special connections, assemblies, and expansion joints.

3. Mechanical drawings.

a. Heating, steam piping, and air-conditioning systems. Radiators and steam heated equipment such as sterilizers, warmers, and steam tables; heating and steam mains and branches with pipe sizes; diagram of heating and steam risers with pipe sizes; sizes, types, and capacities of boilers, furnaces, hot water heaters with stokers, oil burners, or gas burners; pumps, tanks, boiler breeching, and piping and boiler room accessories; air-conditioning systems with required equipment, water and refrigerant piping, and ducts; supply and exhaust ventilation systems with heating/cooling connections and piping; air quantities for all room supply and exhaust ventilating duct openings.

b. Plumbing, drainage, and standpipe systems - size and elevation of: street sewer, house sewer, house drains, street water main, and water service into the building; location and size of soil, waste, and water service with connections to house drains, clean-outs, fixtures, and equipment; size and location of hot, cold and circulating branches, and risers from the service entrance, and tanks; riser diagram for all plumbing stacks with vents, water risers, and fixture connections; gas, oxygen, and vacuum systems; standpipe and sprinkler systems where required; all fixtures and equipment that require water and drain connections.

4. Electrical drawings.

a. Electric service entrance with switches and feeders to the public service feeders, characteristics of the light and power current, transformers and their connections if located in the building;

b. Location of main switchboard, power panels, light panels, and equipment. Diagram of feeders and conduits with schedule of feeder breakers or switches;

c. Light outlets, receptacles, switches, power outlets and circuits;

d. Telephone layout showing service entrance telephone switchboard, strip boxes, telephone outlets and branch conduits;

e. Nurses' call systems with outlets for beds, duty stations, door signal light, annunciators, and wiring diagrams;

f. Emergency electrical system with outlets, transfer switch, sources of supply, feeders, and circuits;

g. All other electrically operated systems and equipment.

(b) Specifications. Specifications shall supplement the drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment and shall include:

1. Cover or title sheet;

2. Index;

3. Sections describing materials and workmanship in detail for each class of work.

(c) Access to work. Representatives of the

appropriate state agencies shall have access at all reasonable times to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

Section 4. Compliance with Building Codes, Ordinances and Regulations. (1) This section may be administered independently from other sections of this regulation.

(2) General. Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(3) The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended;

(b) Requirements for plumbing pursuant to 815 KAR 20:010-191, as amended;

(c) Requirements for air contaminants for incinerators pursuant to 401 KAR 59:020 and 401 KAR 61:010;

(d) Requirements for elevators pursuant to 815 KAR 4:010;

(e) Requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(4) Prior to occupancy the facility shall have final approval from appropriate agencies.

(5) All facilities shall be currently approved by the Fire Marshal's office in accordance with the Life Safety Code before relicensure is granted by the licensing agency.

Section 5. Facility Requirements and Special Conditions. (1) A copy of the narrative program as submitted in the Certificate of Need application for each project shall be provided by the sponsor and shall describe the functional space requirements, staffing patterns, departmental relationships, and other basic information relating to the fulfillment of the objectives of the facility.

(2) The extent (number and types of rooms) of the diagnostic, clinical, and administrative facilities to be provided shall be determined by the services contemplated and the estimated patient load as described in the narrative program.

(3) Facilities shall be available to the public, staff, and patients who may be physically handicapped with special attention given to ramps, drinking fountain height, mirrors, etc.

Section 6. Nursing Unit. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) Maximum room capacity shall be four (4) patients.

(b) Minimum room areas exclusive of toilet rooms, closets, lockers, wardrobes, or vestibules shall be 100 square feet in one (1) bed rooms and eighty (80) square feet per bed in multibed rooms.

(c) Multibed rooms shall be designed to permit no more than two (2) beds side by side parallel to the window wall with not less than a four (4) foot space provided between beds, and at least a three (3) foot space between the side of a bed and the nearest wall, fixed cabinet, or

heating/cooling element. A minimum of four (4) feet is required between foot of bed and opposite wall, or foot of the opposite bed in multibed rooms.

(d) Window. All patient rooms must have windows operable without the use of tools and shall have sills not more than three (3) feet above the floor. Window area shall be at least eight (8) percent of patient room floor area.

(e) Nurses' calling system. See Section 32(7) of this regulation.

(f) Lavatory. In single and two (2) bed rooms with private toilet room, the lavatory may be located in the toilet room. Where two (2) patient rooms share a common toilet, a lavatory shall be provided in each patient room.

(g) Wardrobe or closet for each patient. Minimum clear dimensions shall be eight (8) inches deep by one (1) foot and eight (8) inches wide with full length hanging space, clothes rod and shelf.

(h) Cubicle curtains, or equivalent built-in devices shall be provided to furnish complete privacy for each patient at any one time in multibed rooms.

(i) No patient room shall be located more than 120 feet from the nurses' station, the clean workroom, and the soiled workroom. No room shall be used as a patient room where the access is through another patient's room. At least sixty (60) percent of the beds in a nursing unit shall be located in rooms designed for one (1) or two (2) beds.

(2) Service areas in each nursing unit. The size of each service area will depend on the number and types of beds within the unit and shall include:

(a) Nurses' station for charting, doctors' charting, communications, and storage for supplies and nurses' personal effects.

(b) Clean workroom or clean holding area. The clean workroom shall contain a work counter, hand-washing and storage facilities. The clean holding room shall be part of a system for storage and distribution of clean and sterile supplies and shall be similar to the clean workroom except that the work counter and hand-washing facilities may be omitted.

(c) Soiled workroom or soiled holding room. The soiled workroom shall contain a clinical sink or equivalent flushing rim fixture, sink equipped for hand washing, work counter, waste receptacle, and linen receptacle. A soiled holding room shall be part of a system for collection and disposal of soiled materials and shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted.

(d) Lounge and toilet room(s) for staff including lockers for storage of personal effects readily accessible. (May serve more than one (1) nursing unit.)

(e) Multipurpose room for conferences, demonstrations and consultation. (May serve more than one (1) nursing unit.)

(f) Room for examination and treatment of patients. It shall have a minimum floor area of 120 square feet with a minimum dimension of ten (10) feet. (May serve more than one (1) nursing unit.) Room may be eliminated if all patient rooms are single-bed rooms. The room shall contain a lavatory or sink equipped for hand washing, work counter, storage facilities, and examination table. The emergency treatment room may be used for this purpose, if it is

conveniently located on the same floor as the patient rooms.

(g) Medicine area. Provision shall be made for convenient and prompt twenty-four (24) hour distribution of medicine to patients. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system. If used, a medicine preparation room or unit shall be under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for biologicals and drugs. A medicine dispensing unit may be located at the nurses' station, in the clean workroom, or in an alcove or other space under direct control of the nursing or pharmacy staff. Controlled substances locker must be under double lock. A hand-washing facility shall be provided.

(h) Clean linen storage. Enclosed storage space (may be designated area within the clean workroom). If a closed cart system is used, storage may be in an alcove.

(i) Nourishment station. This shall contain a sink equipped for hand washing. Equipment for serving between scheduled meals, refrigerator, storage cabinets, and ice maker-dispenser units to provide patient service and treatment. (May serve more than one (1) nursing unit on the same floor.)

(j) Patients' bathing facilities. At least one (1) shower stall or one (1) bathtub for each twelve (12) patients not individually served. At least one (1) bathing facility on each patient floor shall have space for a wheelchair patient with an assisting attendant. At least one (1) sitz bath shall be provided in post partum units.

(k) Stretcher and wheelchair parking area or alcove. (May serve more than one (1) nursing unit on the same floor.)

(l) Janitor's closet for storage of housekeeping supplies and equipment with a floor receptor or service sink. (May serve more than one (1) nursing unit on the same floor.)

(m) Equipment storage room with sufficient space for equipment such as I.V. stands, inhalators, air mattresses, and walkers. (May serve more than one (1) nursing unit on the same floor.)

(n) Emergency equipment storage. Space for equipment such as crash carts shall be provided and be under direct control of the nursing staff in close proximity to the nurses' station and out of traffic. (May serve more than one (1) nursing unit on the same floor.)

(3) Patient toilet rooms. A toilet room shall be directly accessible from each patient room without going through the general corridor. One (1) toilet room may serve two (2) patient rooms, but not more than four (4) beds. (The lavatory may be omitted from the toilet room if one (1) is provided in each patient room.)

(4) Isolation room. Isolation room(s) for the particular use of those prone to infections as well as those suffering from infections shall be provided. Each isolation room shall have:

(a) Only one (1) patient per room;

(b) Separate toilet room with bath or shower and lavatory for the exclusive use of the patient allowing for direct entry from the patient bed area; and

(c) Facilities outside and immediately adjacent to the patient room for maintaining aseptic conditions.

Section 7. Intensive Care Unit. Hospitals

which have intensive care units shall meet the following requirements:

(1) Patient rooms. Cardiac intensive care patients shall be placed in single-bed rooms. Medical and surgical intensive care patients may be housed in a single-bed room or in multibed rooms. In the latter case, at least one (1) single-bed room shall be provided in each unit. All beds shall be arranged to permit direct visual observation by nursing staff. Each patient room shall meet the following requirements:

(a) Clearance between beds in multibed rooms shall not be less than seven (7) feet with a minimum of three (3) feet to the side of beds and at least four (4) feet from the foot of the beds. Single-bed rooms or cubicles shall have a minimum clear area of 120 square feet with a minimum dimension of ten (10) feet.

(b) View panels shall be provided in the doors and walls for nursing staff observation of patients. A means shall be provided to obstruct the view panels when the patient requires visual privacy. Glazing for view panels shall be safety glass, wire glass or clear plastic to reduce the hazard from accidental breakage, except where wire glass is required for fire safety purposes.

(c) An I.V. solution support shall be provided for each patient so that the solution is not suspended directly over the patient.

(d) A lavatory equipped for hand washing shall be provided in each private patient room. In multibed rooms there shall be at least one (1) lavatory for each six (6) beds.

(e) Nurses' calling system. See Section 32(7) of this regulation.

(f) Each cardiac intensive care patient shall be provided a toilet facility which is directly accessible from the bed area. The water closet shall have sufficient clearance around it to facilitate its use by patients needing assistance. Portable water closets are permitted within the patient room. If portable units are used, facilities for servicing and storing them shall be conveniently located to the cardiac care unit.

(g) Each room shall have a window or each bed shall have visual access to a window. In the latter case, by use of vision panels in partitions, one (1) window may serve more than one (1) patient. The window sill height shall not exceed three (3) feet above the floor.

(2) Service areas. The size and location of each service area will depend upon the number of beds to be served. One (1) area may serve two (2) or more intensive care units. The following service areas shall be located in or be readily available to each intensive care unit:

(a) Nurses' station. It shall be located to permit direct visual observation of each patient served.

(b) Hand-washing facilities. These shall be located convenient to the nurses' station and medicine area.

(c) Charting facilities. These shall be separated from the monitoring service.

(d) Staff's toilet room. This room shall contain a water closet and lavatory equipped for hand washing.

(e) Individual closets or compartments for the safekeeping of coats and personal effects belonging to the nursing staff. They shall be located at or near the nurses' station.

(f) Clean workroom or a system for storage and distribution of clean and sterile supplies. The

clean workroom shall contain a work counter, hand-washing facility, and storage facilities.

(g) Soiled workroom or soiled holding room. The soiled workroom shall contain a clinical sink or equivalent flushing rim fixture, sink equipped for hand washing, work counter, waste receptacle and soiled linen receptacles. A soiled holding room shall be part of a system for collection and disposal of soiled materials and shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted.

(h) Facilities for washing or flushing bedpans. These shall be provided within the unit.

(i) Medicine area. Provision shall be made for convenient and prompt twenty-four (24) hour distribution of medicine to patients. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit or by another approved system. If used, a medicine preparation room or unit shall be under the nursing staff's visual control, contain a work counter, refrigerator, and locked storage for biologicals and drugs. It shall contain a minimum floor area of fifty (50) square feet. A medicine dispensing unit may be located at the nurses' station, in the clean workroom, or in an alcove or other space under direct control of the nursing or pharmacy staff. Controlled substances must be under double lock and a hand-washing facility shall be provided.

(j) Clean linen storage. A separate closet or designated area within the clean workroom shall be provided. If a closed cart system is used, storage may be in an alcove.

(k) Nourishment station. This shall contain a sink equipped for hand washing, equipment for serving between scheduled meals, refrigerator, storage cabinets and ice maker-dispenser units to provide ice for patients' service and treatment.

(l) Emergency equipment storage. Space shall be provided for a crash cart and similar emergency equipment.

(m) Equipment storage room. Space for necessary equipment such as inhalators shall be provided.

(n) Patients' storage facilities. Individual lockers shall be provided for the storage of patients' clothing and personal effects. These lockers may be located outside the intensive care unit. Lockers shall be of size to permit hanging of full length garments.

(o) Waiting room. A separate waiting room shall be provided for family members and others who may be permitted to visit the intensive care patients. A toilet room, public telephone, and seating accommodations for long waiting periods shall be provided.

Section 8. Obstetrical Suite. (1) General. If an obstetrical suite is included in the narrative program, it shall be located and arranged to preclude unrelated traffic through the suite. The number of delivery rooms, labor rooms, recovery beds, and the sizes of the service areas shall depend upon the estimated obstetrical workload.

(2) Delivery room(s). Each room shall have a minimum clear floor area of 300 square feet exclusive of fixed and movable cabinets and shelves with a minimum dimension of sixteen (16) feet.

(3) Labor room(s). These rooms shall be single-bed or two (2) bed rooms with a minimum

clear area of 100 square feet per bed. Labor beds shall be provided at the rate of two (2) for each delivery room. Each labor room shall contain a lavatory equipped for hand washing and have direct access to a toilet room. One (1) toilet room may serve two (2) labor rooms. Labor rooms shall be arranged so that doors are visible from a nurses' work station and shall be directly accessible to facilities for medication, hand washing, charting and storage for supplies and equipment. At least one (1) shower for use by labor room patients shall be provided. Controls shall be located outside of the wet area for use by nursing staff.

(4) Recovery room. It shall contain not less than two (2) beds, charting facilities located to permit staff surveillance of all beds, facilities for medicine dispensing, hand washing facilities, clinical sink with bedpan flushing device, and storage for equipment and supplies. The recovery room may be omitted in hospitals with an annual birth rate of less than 1,500.

(5) Service areas in each obstetrical suite. The services shall include:

(a) Control station located to permit visual surveillance of all traffic which enters the obstetrical suite.

(b) Supervisor's office or station.

(c) Sterilizing facilities with high-speed autoclave(s) conveniently located to serve all delivery rooms.

(d) Drug distribution station for storage and preparation of medication for patients. It shall contain a work counter, storage facilities, and a sink equipped for hand washing. Controlled substances shall be under double lock.

(e) Scrub facilities. Two (2) scrub stations shall be provided near the entrance to each delivery room. However, two (2) scrub stations may serve two (2) delivery rooms if the scrub stations are located adjacent to the entrance to each delivery room.

(f) Soiled workroom for the exclusive use of the obstetrical suite staff or a soiled holding area that is part of a system used for the collection and disposal of soiled materials. The soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle and linen receptacle. A soiled holding room shall be similar to the soiled workroom except that the clinical sink may be omitted.

(g) Clean workroom or a clean supply room. A clean workroom is required when clean materials are assembled within the obstetrical suite prior to use. A clean workroom shall contain a work counter, sink equipped for hand washing, and space for clean and sterile supplies. A clean supply room shall be provided when the facility utilizes a central system for the cleanup, distribution of clean and sterile supplies and central storage.

(h) Anesthesia workroom for cleaning, testing and storage of anesthesia equipment. It shall contain a work counter and sink.

(i) Anesthesia storage facilities.

(j) Medical gas supply with storage space for reserve medical gas cylinders shall be provided.

(k) Equipment storage room(s) for equipment used in the obstetrical suite.

(l) Staff clothing change areas. Appropriate areas shall be provided for male and female personnel (technicians, nurses, aides, and doctors) working within the obstetrical suite. The areas shall contain lockers, showers,

toilets, lavatories equipped for hand washing and space for putting on scrub suits and boots. These areas shall be arranged to provide a one (1) way traffic pattern, so that personnel entering from outside the obstetrical suite can shower, change and go directly into the obstetrical suite. Space for removal of scrub suits and boots in change area shall be designed so that personnel using it will avoid physical contact with clean personnel.

(m) Lounge and toilet facilities for obstetrical staff. A nurses' toilet room shall be provided near the labor rooms and recovery room(s).

(n) Janitor's closet. A closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the obstetrical suite.

(o) Stretcher storage area. This area shall be out of direct line of traffic.

Section 9. Newborn Nursery Unit. (1) General. Each nursery shall provide:

(a) Lavatory for hand washing at the rate of one (1) for each eight (8) infants;

(b) Emergency nurses' call system;

(c) Oxygen;

(d) Isolation nursery; and

(e) Glazed observation windows to permit viewing infants from public areas, from workrooms and between adjacent nurseries.

(2) Full-term nursery. Each room shall contain not more than eight (8) bassinets (this may be increased to sixteen (16) if the extra bassinets are of the isolation type) with a minimum area of twenty-four (24) square feet per regular bassinet and forty (40) square feet per isolation type bassinets. No nursery shall open directly into another nursery.

(3) Workroom. Each nursery shall be served by a connecting workroom. It shall contain gowning facilities at the entrance for staff and housekeeping personnel, work space with counter, refrigerator, lavatory or sinks equipped for hand washing, and storage. One (1) workroom may serve a number of full-term nurseries provided that required services are convenient to each.

(4) Examination and treatment room. It shall contain a work counter, storage and lavatory equipped for hand washing.

(5) Premature and special care nursery. A premature nursery is required only for hospitals with twenty-five (25) or more maternity beds. Each nursery shall have a minimum area of forty (40) square feet per bassinet. The premature nursery shall have its own workroom including lavatory. (A work area within the premature nursery may be used but this area shall be in addition to the required bassinet area.)

(6) Formula room. This room is intended for the sole purpose of preparing the infant formula and shall have no direct access to the nursery or workroom. It may be located elsewhere in the hospital. The following shall be provided unless commercially-prepared formula is used:

(a) Work counter with built-in sink with gooseneck-type spout and knee or foot control;

(b) Lavatory;

(c) Hot plate;

(d) Refrigerator;

(e) Sterilizer (autoclave); and

(f) Bottle washer.

(7) If commercially prepared formula is to be used or other modifications are proposed in formula preparation and processing, the formula

room shall include such space and equipment as are necessary to accommodate formula processing, handling, and storage requirements.

(8) Janitor's closet. This closet for exclusive use in the nursery shall contain floor receptor or service sink and space for supplies and cleaning equipment.

Section 10. Pediatric Unit. If provided as a separate unit it shall include:

(1) Patient rooms. Pediatric patient rooms shall conform to the same requirements as Section 6(1)(b) and (c) of this regulation except that patient rooms used for cribs shall contain at least sixty (60) square feet of clear area for each crib with no more than six (6) cribs in a room.

(2) Nursery. Each nursery serving pediatric patients shall contain no more than eight (8) bassinets. The minimum clear floor area per bassinet shall be forty (40) square feet. Each room shall contain a lavatory equipped for hand washing, nurses' emergency calling system and glazed view windows for observation of infants from public areas and the workroom.

(3) Nursery workrooms. Each nursery shall be served by a connecting workroom. It shall contain gowning facilities at the entrance for staff and housekeeping personnel, work space with counter, storage facilities and a lavatory or sink equipped for hand washing. One (1) workroom may serve more than one (1) nursery.

(4) Examination and treatment room for nursery(ies) may be located in a separate room or a designated part of the workroom. It shall contain a work counter, storage facilities and a lavatory equipped for hand washing.

(5) Service areas. The service areas shall conform to the requirements in Section 6(2) of this regulation and shall meet the following additional conditions:

(a) Multipurpose or individual room(s) shall be provided for dining, educational, and play purposes. A total floor area of twenty (20) square feet per pediatric patient based on fifty (50) percent of the total number of pediatric patients shall be provided. Special provisions shall be made to minimize the impact noise transmission through the floor of the multipurpose room(s) to occupied spaces below.

(b) Space for preparation and storage of infant formula shall be provided in the unit or in a convenient location nearby.

(c) Toilet room. A toilet room shall be provided for each sex, with minimum ratio of one (1) toilet for each eight (8) beds excluding bassinets.

(d) Storage closets or cabinets for toys and for educational and recreational equipment shall be provided.

(e) Storage space shall be provided for replacement of cribs and adult beds to provide flexibility for interchange of patient accommodations.

Section 11. Psychiatric Unit. If included as a separate unit, it shall be designed as other nursing units except that care must be taken to provide for patients needing close supervision to prevent the patient's escape, suicide, or hiding. The unit shall contain:

(1) Patient room. Each patient room shall meet the following requirements:

(a) Minimum floor area of 100 square feet in one (1) bed rooms and eighty (80) square feet

per patient in multibed rooms.

(b) Maximum of two (2) patients per room.

(c) Patient toilet rooms. A toilet room shall be directly accessible from each patient room without going through the general corridor. One (1) toilet room may serve two (2) patient rooms.

(d) Lavatory. A lavatory shall be provided in each patient room. If the patient room is served by its own private toilet room the lavatory may be located in the toilet room.

(e) Window. Sill height shall not be higher than three (3) feet above the floor. Windows in psychiatric units shall be of security type or a type that can only be opened by keys or tools that are under the control of staff. Degree of security required shall be as determined by program, but operation of sash shall be restricted to inhibit possible tendency for escape or suicide. Where glass fragments may create a hazard, safety glazing and/or other appropriate security features shall be incorporated.

(f) A nurses' calling system is not required. If a call system is included, provisions shall be made to permit removal of call buttons and/or use of blank plates as appropriate.

(g) The visual privacy provided each patient shall isolate patients from one another but not from observation by staff.

(h) Bedpan flushing devices may be omitted from patient room toilets.

(2) Service areas. These areas shall conform to the requirements in Section 6(2) of this regulation and shall meet the following additional conditions:

(a) Provide separate space for occupational therapy at the rate of fifteen (15) square feet per patient and a minimum area of 400 square feet.

(b) A minimum of two (2) separate social spaces, one (1) appropriate for noisy activities and the other for quiet activities shall be provided. The combined area shall not be less than thirty (30) square feet per patient with not less than 120 square feet for each of the two (2) spaces, whichever is greater. This space may be shared by dining activities.

(c) Storage for recreational and occupational therapy equipment.

(d) Storage for patients' belongings.

(e) Bathing facilities. Bathtubs or showers shall be provided at the rate of one (1) for each four (4) beds which are not individually served. At least one (1) bathing facility shall have space for a wheelchair patient with an assisting attendant.

(3) Seclusion room(s). A seclusion room shall be provided for patients requiring security and protection from either himself or others. The room shall be located in a manner affording direct supervision of the patient by the nursing staff. It shall be a single room and be constructed to minimize the patient's hiding, escape, injury or suicide. There shall be a minimum of one (1) seclusion room for every twenty-four (24) beds. The seclusion room(s) is intended for short-term occupancies by patients who may have become violent or suicidal; therefore, special fixtures, hardware, etc., including ground fault interrupters for electrical circuits and tamper-proof screws shall be used. Doors shall swing outward and shall have provisions for staff observation while maintaining privacy from public and other patients.

Section 12. Surgical Suite. (1) General. If a surgical suite is included in the narrative program, it shall be located and arranged to preclude unrelated traffic through the suite. The number of operating rooms and recovery beds, including the size of the service areas, shall be based on the expected surgical workload.

(2) Operating room(s). Each operating room shall have a minimum clear floor area of 360 square feet, exclusive of fixed and movable cabinets and shelves, with a minimum dimension of eighteen (18) feet. Storage space for splints and traction equipment shall be provided for rooms equipped for orthopedic surgery. At least two (2) x-ray film illuminators in each operating room shall be provided.

(3) Rooms for surgical cystoscopy and other endoscopic procedures. These rooms shall have a minimum clear area of 250 square feet, exclusive of fixed and movable cabinets and shelves, with a minimum dimension of fifteen (15) feet. Facilities for the disposal of liquid wastes shall be provided.

(4) Recovery room(s). Room(s) for post anesthesia recovery of surgical patients shall be provided and shall contain a drug distribution station, hand-washing facilities, charting facilities, clinical sink and storage space for supplies and equipment. Design shall provide for a minimum of three (3) foot clearance to each side of the recovery beds.

(5) Medical preparation and holding area. Room(s) shall be provided for medical preparation of patients and holding prior to surgery. It shall contain a drug distribution station, hand-washing facilities and charting facilities. Design shall provide for a minimum of three (3) foot clearance to each side of the beds. This area may be eliminated if the medical preparation of patients prior to surgery is done in the patient bedrooms.

(6) Service areas in each surgical suite. The services shall include:

(a) Control station located to permit visual surveillance of all traffic which enters the surgical suite;

(b) Sterilizing facilities with high speed autoclave(s) located nearby the operating rooms;

(c) Drug distribution station for storage and preparation of medication for patients. It shall contain a work counter, storage facilities, and a sink equipped for hand washing. Controlled substances shall be under double lock;

(d) Scrub facilities. Two (2) scrub stations shall be provided near the entrance to each operating room. However, two (2) scrub stations may serve two (2) operating rooms if the scrub stations are located adjacent to the entrance to each operating room;

(e) Soiled workroom for the exclusive use of the surgical suite staff or a soiled holding area that is part of a system used for the collection and disposal of soiled materials. The soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle and linen receptacle. A soiled holding room shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted;

(f) Clean workroom or a clean supply room. A clean workroom is required when clean materials are assembled within the surgical suite prior to use. A clean workroom shall contain a work counter, sink equipped for hand washing, and

storage space for clean and sterile supplies. A clean supply room shall be provided when the facility utilizes a central system for the cleanup, distribution of clean and sterile supplies and central storage;

(g) Anesthesia workroom. For cleaning, testing and storage of anesthesia equipment. It shall contain a work counter and sink;

(h) Anesthesia storage facilities;

(i) Medical gas supply with storage space for reserve medical gas cylinders shall be provided;

(j) Storage room(s) for equipment and supplies used in the surgical suite;

(k) Staff clothing change areas. Appropriate areas shall be provided for male and female personnel (orderlies, technicians, nurses and doctors) working within the surgical suite. The areas shall contain lockers, showers, toilets, lavatories equipped for hand washing and space for putting on scrub suits and boots. These areas shall be arranged to provide a one (1) way traffic pattern so that personnel entering from outside the surgical suite can shower, change and go directly into the surgical suite. Space for removal of scrub suits and boots in the change area shall be designed so that personnel using it will avoid physical contact with clean personnel;

(l) Outpatient surgery change areas. If the narrative program includes an outpatient surgery load, a separate area shall be provided where outpatients can change from street clothing into hospital gowns and are prepared for surgery. This shall include a waiting room, lockers, toilets and clothing change or gowning area with a traffic pattern similar to that of the staff clothing change area;

(m) Outpatient recovery. If the program narrative includes outpatient surgical services, provisions shall be made for a separate postrecovery area for outpatients;

(n) Patient's holding area. In facilities with two (2) or more operating rooms, a room or alcove shall be provided to accommodate stretcher patients waiting for surgery. This area shall be under the visual control of the surgical suite control station. If a separate room for medical preparation of patients is provided as called for under Section 11(5) of this regulation, this holding area will not be required;

(o) Stretcher storage areas. This area shall be out of direct line of traffic;

(p) Lounge and toilet facilities for surgical staff. These facilities shall be located to permit use without leaving the surgical suite. A nurses' toilet room shall be provided near the recovery room(s); and

(q) A janitor's closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided for exclusive use in the surgical suite.

Section 13. Outpatient and Emergency Suite.

(1) General. Facilities for emergency and outpatient clinic care shall be provided if included in the narrative plan.

(2) Emergency patient care services. The extent of the emergency services to be provided in the hospital will depend upon the community needs and the availability of other organized programs for emergency care within the community. The facilities shall be located to prevent outpatients from traversing inpatient areas and shall include:

(a) Entrance at grade level which is sheltered from the weather and has convenient access for ambulances and wheelchairs.

(b) Reception and control area located near the entrance, waiting area(s) and treatment room(s).

(c) Public waiting area with toilet facilities, public telephone and drinking fountain.

(d) Examination and treatment room(s). Hand-washing facilities shall be provided in each room. Each room shall have a minimum floor area of 120 square feet with a minimum dimension of ten (10) feet.

(e) Emergency room for minor surgical procedures. It shall contain a hand-washing facility and shall have a minimum floor area of 240 square feet. The minimum dimension shall be fifteen (15) feet.

(f) Clean workroom. It shall contain a work counter, sink equipped for hand washing, and storage space for clean and sterile supplies.

(g) Soiled workroom. It shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle and linen receptacle.

(h) Drug distribution station for storage and preparation of medication. It shall contain a work counter, storage facilities, and sink equipped for hand washing. Controlled substances shall be under double lock.

(i) Nurses' station for nurses' charting, doctors' charting, communications and storage for supplies and nurses' personal effects.

(j) Staff toilet room.

(k) Patient's toilet room. It shall be located convenient to the treatment room(s).

(l) Wheelchair and stretcher alcove located convenient to the entrance to the department.

(m) Janitor's closet. It shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment for exclusive use in the emergency department.

(n) Equipment storage room.

(3) Outpatient department. If outpatient services are provided, the extent of the administrative, clinical and diagnostic facilities to be provided will depend on the estimated patient load as described in the program narrative. The planning of outpatient facilities shall provide for the privacy and dignity of the patient during interview, examination, and treatment. Facilities shall be located so that outpatients do not traverse inpatient areas and the following shall be provided:

(a) Entrance at grade level which is sheltered from weather and able to accommodate wheelchair access.

(b) Reception and control area located near the entrance and waiting area(s).

(c) Wheelchair storage out of the line of direct traffic.

(d) Public waiting area with toilet facilities, public telephone and drinking fountain.

(e) Interview space(s) for private interviews relating to social service, credit and admissions.

(f) General or individual office(s) for business transaction, records, administrative and professional staffs.

(g) Multipurpose room(s) for conferences, meetings, and health education purposes. It shall be equipped for the use of visual aids.

(h) General purpose examination room(s) for medical, obstetrical and similar examinations. Each room shall have a minimum floor area of eighty (80) square feet, excluding such spaces as vestibule, toilet, closet and work counter. Examination table shall be placed to provide at least thirty (30) inches clearance to each side and at the foot of the table. A lavatory or sink equipped for hand washing shall be provided in each room.

(i) Special purpose examination rooms. Room sizes for special clinics such as eye, dental, ear, nose and throat examinations shall be determined by the types of equipment used but shall be not less than eighty (80) square feet. A lavatory or sink equipped for hand washing shall be provided in each room.

(j) Observation room(s) for handling of isolation, suspect or disturbed patients. It shall be located convenient to the nurses' station to permit close observation of patients. In facilities having an annual patient load of 15,000 or less, a separate room will not be required if an examination room is modified to accommodate this function.

(k) Patient toilet facilities shall be provided. The number required will depend on the actual patient load of the department.

(l) Nurses' station for nurses' charting, doctors' charting, communications and storage for supplies and nurses' personal effects.

(m) Staff toilet room located convenient to the nurses' station.

(n) Clean workroom. It shall contain a work counter, sink equipped for hand washing, and storage space for clean and sterile supplies.

(o) Soiled workroom. It shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle and linen receptacle.

(p) Drug distribution station for storage and preparation of medication. It shall contain a work counter, sink equipped for hand washing, and storage facilities. Controlled substances shall be under double lock.

(q) Wheelchair and stretcher alcove located convenient to the entrance to the department.

(r) Janitor's closet. It shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment for exclusive use in the outpatient department.

(s) Equipment storage room.

Section 14. Radiology Suite. This suite shall contain the following:

(1) Radiographic room(s);

(2) Film processing facilities;

(3) Viewing and administrative area(s);

(4) Film storage facilities;

(5) Toilet room with hand-washing facility. It shall be located directly accessible from each fluoroscopy room without entering the general corridor area;

(6) Dressing area(s) for ambulatory patients with convenient access to toilets;

(7) Waiting room or alcove for ambulatory patients;

(8) Holding area for stretcher patients. It shall be located out of the direct line of normal traffic; and

(9) Hand-washing facilities shall be provided in each radiographic room unless the room is used only for routine diagnostic screening such as for chest x-rays.

Section 15. Laboratory Suite. Facilities shall be provided for the following and the size of the areas including equipment will depend on the patient workload:

- (1) Hematology;
- (2) Clinical chemistry. An acid-shower and eyewashing facility shall be provided nearby;
- (3) Urinalysis. A specimen toilet with hand-washing facility shall be provided nearby;
- (4) Cytology;
- (5) Bacteriology;
- (6) Waiting area for ambulatory patients;
- (7) Administrative support areas;
- (8) Blood storage facilities;
- (9) Blood specimen collection area. It shall contain work counter, hand-washing facilities, and space for patient seating;
- (10) Glass-washing and sterilizing facilities; and
- (11) Recording and filing facilities.

Section 16. Physical Therapy Suite. If a physical therapy suite is included by the narrative program, the following items shall be provided:

- (1) Office space;
- (2) Waiting space;
- (3) Treatment area(s) for thermotherapy, diathermy, ultrasonics, hydrotherapy, etc. Cubicle curtains around each individual treatment area shall be provided for privacy purposes. Hand-washing facilities shall be provided but one (1) lavatory or sink may serve more than one (1) treatment cubicle. Facilities for collection of wet and soiled linen or other material shall be provided;
- (4) Exercise area(s);
- (5) Storage for clean linen, supplies, and equipment;
- (6) Patients' dressing areas, showers, lockers and toilet rooms;
- (7) Janitor's closet with floor receptor or service sink and storage space for housekeeping supplies and equipment; and
- (8) Wheelchair and stretcher storage area.

Section 17. Morgue and Autopsy. (1) If autopsies are performed within the hospital, the following shall be provided:

- (a) Refrigerated facilities for body-holding.
- (b) Autopsy room. This room shall contain the following:
 1. Work counter with sink equipped for hand washing;
 2. Storage space for supplies, equipment and specimens;
 3. Autopsy table;
 4. Clothing change area with shower, toilet and lockers; and
 5. A janitor's closet containing a floor receptor or service sink with storage for housekeeping supplies and equipment for exclusive use in this area.

(2) If autopsies will be performed outside the hospital, only a well-ventilated body-holding room shall be provided.

Section 18. Pharmacy or Drug Room. If drugs are used, an adequate supply and other medicinal agents shall be available at all times to meet the requirements of the hospital. They shall be stored in a safe manner and kept properly labeled and accessible. Controlled substances and other dangerous or poisonous drugs shall be handled in a safe manner to protect against

their unauthorized use. Controlled substances must be under double lock. There shall be adequate refrigeration for biologicals and drugs which require refrigeration. The existing laws, rules and regulations governing drugs and poisons shall be complied with.

Section 19. Dietary Department. Food service facilities shall be designed and equipped to meet the requirements of the narrative program. The department shall include the following facilities unless an acceptable commercially prepared dietary service, meals, and/or disposables are to be used. If a commercial service will be used, dietary areas and equipment shall be designed to accommodate the requirements for sanitary storage, processing, and handling.

(1) Control station for the receiving of food supplies.

(2) Food preparation facilities. Conventional food preparation systems require space and equipment for preparing, cooking, and baking. Convenience food service systems such as frozen prepared meals, bulk packages entrees, and individual package portions, or systems using contractual commissary services require space and equipment for thawing, portioning, cooking and/or baking.

(3) Hand-washing facility(ies) located conveniently accessible in the food preparation area.

(4) Patients' meals service facilities. Examples are those required for tray assembly and distribution.

(5) Dishwashing space. It shall be located in the room or alcove separate from the food preparation and serving area. Commercial-type dishwashing equipment shall be provided. Space shall also be provided for receiving, scraping, sorting and stacking of soiled dishware and tableware prior to cleanup. The area shall be designed to allow clean dishware and tableware to be removed at a different location than the one used for the soiled dishware and tableware. A hand-washing lavatory shall be conveniently located.

(6) Pot-washing facilities.

(7) Refrigerated storage to accommodate a three (3) day minimum supply.

(8) Dry storage to accommodate a three (3) day minimum supply.

(9) Storage areas and sanitizing facilities for cans, carts, and mobile tray conveyors.

(10) Waste storage facilities shall be located in a separate room easily accessible to the outside for direct pickup or disposal.

(11) Dining space for ambulatory patients, staff and visitors.

(12) Office(s) or desk spaces for dieticians or the dietary service manager.

(13) Toilets with hand-washing facilities for use by the dietary staff shall be immediately available.

(14) Janitor's closet located within the department. It shall contain a floor receptor or service sink with storage for housekeeping supplies and equipment to be used exclusively in this area.

Section 20. Administrative and Public Areas. The following shall be provided:

(1) Lobby. It shall include:

(a) Storage space for wheelchairs;

(b) Reception and information counter or desk;

- (c) Waiting space(s); and
- (d) Public toilet facilities designed for use by the physically handicapped.
- (2) Interview space(s) for private interviews relating to social services, credit, and admissions.
- (3) Director of nurses' office.
- (4) Staff toilet rooms.
- (5) Medical library facilities.
- (6) General or individual office(s) for business transactions, medical and financial records, administrative and professional staff use.
- (7) Administrator's office.
- (8) Multipurpose room(s) for conferences, meetings, and health education purposes including provisions for showing visual aids.
- (9) Storage for office equipment and supplies.

Section 21. Medical Records Unit. This unit shall include:

- (1) Medical records administrator/technician office or space;
- (2) Active record storage area;
- (3) Record review and dictating room; and
- (4) Work area for sorting, recording, or microfilming.

Section 22. Central Medical and Surgical Supply Department. The following areas shall be permanently separated from each other:

- (1) Receiving and decontamination room. It shall contain work space and equipment for cleaning medical and surgical equipment and for the disposal of or processing of unclean material. Hand-washing facilities shall be provided.
- (2) Clean workroom. This room shall be divided into work space, clean storage area and sterilizing and sanitizing facilities. Hand-washing facilities shall be provided.
- (3) Storage area for clean supplies and sterile supplies. (May be in a designated area in the clean workroom.)
- (4) Equipment storage.
- (5) Cart storage, if this type of system is utilized.
- (6) Janitor's closet. It shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment to be utilized exclusively in this department.

Section 23. Central Stores. The following shall be provided:

- (1) Off-street unloading facilities.
- (2) Control station for receiving supplies.
- (3) General storage rooms which are adequate in size to meet the needs of the facility.

Section 24. Laundry. On-site processing and off-site processing.

- (1) If linen is to be processed in the hospital, the following shall be provided:
 - (a) Soiled linen receiving, holding and sorting room with hand-washing facilities.
 - (b) Laundry processing room with commercial-type equipment which can process seven (7) days of linen needs within a regularly scheduled work week. Hand-washing facilities shall be provided.
 - (c) Storage for laundry supplies.
 - (d) Clean linen inspection and mending room.
 - (e) Clean linen storage, issuing and holding room or area.
 - (f) Janitor's closet. It shall contain a floor

receptor or service sink with storage space for housekeeping supplies and equipment to be utilized exclusively in this department.

(g) Cart storage and cart sanitizing facilities.

(h) Arrangement of equipment and procedures shall be in a manner to permit an orderly work flow with a minimum of cross traffic that might mix clean and soiled operations.

(2) If linen is to be processed off the hospital site, the following shall be provided:

- (a) Soiled linen holding room with a hand-washing facility conveniently accessible.
- (b) Clean linen receiving, holding, inspection and storage room(s).

Section 25. Employee's Facilities. (1) Female locker room. This room shall have lounge space, lockers for personal effects and a separate toilet room. The area shall be designed for use by the physically handicapped. In some cases shower facilities may be appropriate depending on the size of the facility.

(2) Male locker room. This room shall have lockers and a separate toilet room. The area shall be designed for use by the physically handicapped. In some cases shower facilities may be appropriate depending on the size of the facility.

Section 26. Engineering Service and Equipment Areas. The following shall be provided:

- (1) Room(s) or separate building(s) for boilers, mechanical equipment and electrical equipment;
- (2) Engineer's office;
- (3) Maintenance shop;
- (4) Storage room for building maintenance supplies;
- (5) Storage room for central housekeeping equipment and supplies;
- (6) Office and administrative support space for person(s) in charge of central housekeeping; and
- (7) Yard equipment storage.

Section 27. Waste Processing Services. The following shall be provided:

- (1) Storage and disposal. Space and facilities shall be provided for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal or by a combination of these techniques.
- (2) A gas, electric, or oil-fired incinerator shall be provided for the complete destruction of pathological and infectious waste. Infectious waste shall include, but not be limited to: dressing and material from open wounds, laboratory specimens, and all waste material from isolation patient rooms. Waste tissue and contaminated combustible solids shall be rendered safe by such methods as sterilization or incineration. Culture plates, tubes, sputum cups, contaminated sponges, swabs and the like shall be sterilized before they are washed or discarded. Unpreserved tissue specimens from surgical or necropsy material must be disposed of by incineration.

Section 28. Details and Finishes. All details and finishes shall meet the following requirements:

- (1) Details.
 - (a) Doors to patient toilet rooms and other rooms needing access for wheelchairs shall have

a minimum width of two (2) feet and ten (10) inches.

(b) All doors to patient-room toilets and patient-room bathrooms shall swing outward or be equipped with hardware that will permit access in an emergency.

(c) If required by the narrative program, suitable hardware shall be provided on doors to patient toilet rooms in psychiatric nursing units so that access to these rooms can be controlled by the nursing staff.

(d) Windows and outer doors which may be frequently left in an open position shall be provided with screens.

(e) Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use by wheelchairs and carts.

(f) The location and arrangement of lavatories and sinks equipped with blade handles for hand-washing purposes shall provide a minimum of sixteen (16) inches clearance to each side of the centerline of the fixture.

(g) Towel dispensers or other hand drying equipment shall be provided at all lavatories and sinks equipped for hand washing, except scrub sinks.

(h) Grab bars shall be provided at all patients' toilets, showers, tubs, and sitz baths. The bars shall have one and one-half (1 1/2) inches clearance to walls and shall be of sufficient strength and anchorage to sustain a concentrated load of 250 pounds for a period of five (5) minutes.

(i) Recessed soap dishes shall be provided at all showers and bathtubs.

(j) Mirrors shall not be installed at hand-washing fixtures in food preparation areas or in sensitive areas such as nurseries, clean and sterile supplies, and scrub sinks.

(k) Protection requirements of x-ray and gamma ray installations shall be approved by the Radiation and Product Safety Branch, Office of Consumer Health Protection, Department for Health Services, Cabinet for Human Resources.

(l) Ceiling heights shall be as follows:

1. Boiler room not less than two (2) feet and six (6) inches above the main boiler header and connecting piping with a minimum height of nine (9) feet.

2. Corridors, storage rooms, patient toilet rooms, and other minor rooms not less than seven (7) feet and six (6) inches.

3. Radiographic, operating and delivery rooms, and other rooms containing ceiling-mounted equipment or ceiling-mounted surgical light fixtures shall have a height as required to accommodate the equipment or fixtures.

4. All other rooms not less than eight (8) feet.

(m) Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated shall not be located directly over patient bed areas, delivery suites, operating suites, or nurseries unless special provisions are made to minimize such noise.

(n) Rooms containing heat-producing equipment such as boiler rooms, laundries, and food preparation areas shall be insulated and ventilated to prevent any floor surface from exceeding a temperature of ten (10) degrees Fahrenheit above the ambient room temperature.

(o) Noise reduction criteria. Partition, floor, and ceiling construction in patient areas shall comply with Table 1, Section 33 of this regulation.

(2) Finishes.

(a) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. Floors in areas used for food preparation or food assembly shall be water-resistant and grease-proof. Joints in tile and similar material in such areas shall be resistant to food acids. In all areas subject to frequent wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet, such as shower and bath areas, kitchen and similar work areas, shall have a nonslip finish.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an unbroken surface.

(c) Walls generally shall be washable, and in the immediate area of plumbing fixtures the finish shall be smooth and moisture-resistant. Finish, trim, and floor and wall construction in dietary and food preparation areas shall be free of spaces that can harbor rodents and insects.

(d) Wall bases in kitchens, operating rooms, delivery rooms, and other areas subject to frequent wet cleaning methods shall be made integral and coved with the floor, tightly sealed within the wall, and constructed without voids that can harbor harmful bacteria.

(e) Ceilings shall be cleanable and those in sensitive areas such as surgical, delivery, nursery rooms and isolation rooms shall be readily washable and without crevices that can retain dirt particles. These sensitive areas along with the dietary and food preparation areas shall have a finished ceiling covering all overhead piping and ductwork. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas and similar spaces, unless required for fire-resistive purposes.

(f) Acoustical type ceilings shall be provided for corridors in patient areas, nurses' stations, labor rooms, dayrooms, recreation rooms, dining areas, and waiting areas.

(g) Ceilings of patient rooms in psychiatric nursing units shall be of monolithic or bonded construction.

Section 29. Elevators. General. All hospitals having patients' facilities, such as bedrooms, dining rooms or recreation areas, or critical services, such as operating rooms, delivery rooms, diagnostic or therapy areas, located on other than the main entrance floor, shall have elevators.

(1) Number of elevators.

(a) At least one (1) hospital-type elevator shall be installed where one (1) to fifty-nine (59) patient beds are located on any floor other than the main entrance floor.

(b) At least two (2) hospital-type elevators shall be installed where sixty (60) to 200 patient beds are located on floors other than the main entrance floor, or where the major inpatient services are located on a floor other than those containing patient beds.

(c) At least three (3) hospital-type elevators shall be installed where 201 to 350 patient beds are located on floors other than the main entrance floor, or where the inpatient services are located on a floor other than those containing patient beds.

(d) For hospitals with more than 350 beds, the number of elevators shall be determined from a

study of the hospital plan and the estimated vertical transportation requirements.

(2) Cars and platforms. Cars of hospital-type elevators shall have inside dimensions that will accommodate a hospital bed and attendant and shall be at least five (5) feet wide by seven (7) feet and six (6) inches deep. The car door shall have a minimum clear opening of not less than three (3) feet and eight (8) inches.

(3) Leveling. Elevators shall have automatic leveling of the two (2) way automatic maintaining type with accuracy within plus or minus one-half (1/2) inch.

(4) Operation. Elevators, except freight elevators, shall be equipped with a two (2) way special service switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.

Section 30. Construction. (1) Design. Every building and every portion thereof shall be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards, including seismic forces when applicable.

(2) Foundations. Foundations shall rest on natural solid bearing if a satisfactory bearing is available at reasonable depths. Proper soil-bearing values shall be established in accordance with recognized standards. If solid bearing is not encountered at practical depths, the structure shall be supported on driven piles, augured piles, poured caissons or equivalent designed to support the intended load without detrimental settlement, except that one (1) story buildings may rest on a fill designed by a soils engineer. When engineered fill is used, site preparation and placement of fill shall be done under the direct full-time supervision of the soils engineer. The soils engineer shall issue a final report on the compacted fill operation and a certification of compliance with the job specifications. All footings shall extend to a depth not less than one (1) foot below the estimated frost line.

(3) Natural disasters. Special provisions shall be made in the design of buildings in geographic areas where local experience reflects loss of life or extensive damage to buildings resulting from tornadoes or floods.

Section 31. Mechanical Requirements. (1) General. Prior to completion of the contract and final acceptance of the facility, the architect and/or engineer shall obtain from the contractor certification in writing that all mechanical systems have been tested and that the installation and performance of these systems conform with the final plans and specifications.

(2) Incinerators. The design and installation shall comply with the current Kentucky standards for control of air contaminants for incinerators regulations as applicable to hospitals.

(3) Steam and hot water systems.

(a) Boilers. If boilers are used, a minimum of two (2) shall be provided and the combined capacity of the boilers, based upon the published Steel Boiler Institute or Institute of Boiler and Radiation Manufacturer's net rating, must be able to supply 150 percent of the normal requirements for all systems and equipment in the facility.

(b) Boiler accessories. Boiler feed pumps, condensate return pumps, fuel oil pumps, and circulation pumps shall be connected and

installed to provide normal and standby service.

(c) Valves. Supply and return mains and risers of cooling, heating, and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends except that vacuum condensate returns need not be valved at each piece of equipment.

(4) Thermal and acoustical installation.

(a) Insulation shall be provided on the following within the building:

1. Boilers, smoke breeching, and stacks;

2. Steam supply and condensate return piping;

3. Hot water piping above 120 degrees Fahrenheit at all hot water heaters, generators and converters;

4. Chilled water, refrigerant, other process piping and equipment operating with fluid temperatures below ambient dew point;

5. Water supply and drainage piping on which condensation may occur;

6. Air ducts and casings with outside surface temperature below ambient dew point or temperature above eighty (80) degrees Fahrenheit; and

7. Other piping, ducts, and equipment as necessary to maintain the efficiency of the system.

(b) Insulation on cold surfaces shall include an exterior vapor barrier.

(c) Duct linings shall not be used in systems supplying operating rooms, delivery rooms, recovery rooms, nurseries, isolation rooms and intensive care units unless terminal filters of at least ninety (90) percent efficiency are installed downstream of the lining.

(5) Air-conditioning, heating and ventilation systems.

(a) Temperatures and humidities.

1. The designed capacity of the systems shall provide the following temperatures and humidities in the areas noted below:

Area Designation	Temperature F.	Relative Humidity %	
		(Min)	(Max)
Operating Rooms	68-76*	50**	60
Delivery Rooms	70-76*	50**	60
Recovery Rooms	75	30	60
Intensive Care Rooms	72-78*	30	60
Nurseries	75	30	60
Special Care Nursery	75-80*	30	60

*Variable temperature range required.

**Minimum relative humidity may be reduced to thirty (30) percent if the facility establishes written policy prohibiting the use of flammable anesthetics.

2. For other areas occupied by inpatients, the indoor winter design temperature shall be seventy-five (75) degrees Fahrenheit. For all other occupied areas, the indoor winter design temperature shall be seventy-two (72) degrees Fahrenheit.

3. For all other occupied areas, the indoor summer design temperature shall be seventy-five (75) degrees Fahrenheit.

(b) Ventilation system details. All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates as shown on Table 2, Section 33 of this regulation, shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher

ventilation rates.

1. Outdoor air intakes shall be located as far as practical but not less than twenty-five (25) feet from exhaust outlets of ventilation systems, combustion equipment stacks, medical surgical vacuum systems, plumbing vent stacks, or from areas which may collect vehicular or other noxious fumes. The bottom of outside air intakes serving central air systems shall be located as high as practical but not less than six (6) feet above ground level or if installed above the roof, three (3) feet above roof level.

2. The ventilation systems shall be designed and balanced in accordance with the pressure relationship as shown in Table 2, Section 33 of this regulation.

3. All air supplied to sensitive areas such as operating rooms, delivery rooms and nurseries shall be delivered at or near the ceiling of the area served and all return/exhaust air shall be removed near floor level. At least two (2) return/exhaust outlets shall be provided in each operating room and delivery room.

4. All room supply, return and exhaust outlets shall be located not less than three (3) feet AFF.

5. Isolation rooms and intensive care rooms may be ventilated by induction units if the induction units contain only a reheat coil and if only the primary air from a central system passes through the reheat coil.

6. All central ventilation or air-conditioning systems shall be equipped with filters having minimum efficiencies as listed below:

Area Designation	Minimum No. of Filters	Filter Efficiencies %	
		No. 1.	No. 2
Sensitive Areas*	2	25	90
Patient Care, Treatment, Diagnostic and Related Areas	2	25	90**
Food Preparation and Laundry	1	80	--
Administrative, Storage, and Soiled Holding	1	25	--

*Includes operating rooms, delivery rooms, nurseries, recovery units and intensive care units.

**May be reduced to eighty (80) percent for systems using all-outdoor air.

7. Where two (2) filter beds are required in central ventilation and air-conditioning equipment, Filter Bed No. 1 shall be located upstream of the air-conditioning equipment and Filter Bed No. 2 shall be located downstream of the supply fan, any recirculating spray water system, and water reservoir type humidifiers. Where only one (1) filter bed is required, it shall be located upstream of the air-conditioning equipment unless an additional prefilter is employed. In this case, the prefilter shall be located upstream of the equipment and the main filter may be located further downstream.

8. All filter efficiencies as listed above shall be average atmospheric dust spot efficiencies tested in accordance with ASHRAE Standard 52-76.

9. Filter frames shall be durable and carefully dimensioned, and shall provide an airtight fit with the enclosing ductwork. All joints between filter segments and the enclosing ductwork shall be gasketed or sealed to provide

a positive seal against air leakages.

10. A manometer or its equivalent shall be installed across each filter bed serving sensitive areas or central air systems.

11. Ducts which penetrate construction intended for x-ray or other ray protection shall not impair the effectiveness of the protection.

12. Laboratories shall be provided with outdoor air at a rate of two (2) air changes per hour. If this ventilation rate does not provide the air required to ventilate fume hoods and safety cabinets, additional outdoor air shall be provided. A filter with ninety (90) percent minimum efficiency shall be installed in the air supply system at its entrance to the media transfer room.

13. Laboratory hoods for general use shall have a minimum average face velocity of seventy-five (75) feet per minute. Hoods in which infectious or highly radioactive materials are processed shall have a face velocity of 100 feet per minute and each hood shall have an independent exhaust system with the fan installed at the discharge point of the system. Hoods used for processing infectious materials shall be equipped with a means of disinfection.

14. Duct systems serving hoods in which highly radioactive materials and strong oxidizing agents are used shall be constructed of stainless steel for a minimum distance of ten (10) feet from the hood and shall be equipped with washdown facilities.

15. Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment and reasonable temperatures in the rooms and in adjoining areas.

(6) Plumbing systems. All plumbing systems shall be designed and installed in accordance with the requirements of the current Kentucky plumbing standards regulations applicable to hospitals.

(a) Plumbing fixtures.

1. The material used for plumbing fixtures shall be of nonabsorptive acid-resistant material.

2. Lavatories and sinks required in patient care areas shall have the water supply spout mounted so that its discharge point is a minimum of five (5) inches above the rim of the fixture. All fixtures used by medical and nursing staff and all lavatories used by patients and food handlers shall be equipped with valves which can be operated without the use of hands. Where blade handles are used for this purpose, they shall not exceed four and one-half (4 1/2) inches in length, except that handles on scrub sinks and clinical sinks shall be not less than six (6) inches long.

3. Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(b) Water supply systems.

1. Systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

2. Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

3. Backflow preventers (vacuum breakers) shall be installed on hose bibbs, laboratory sinks, janitors' sinks, bedpan flushing attachments, autopsy tables and all other fixtures to which hoses or tubing can be attached.

4. Flush valves installed on plumbing fixtures

shall be of a quiet operating type.

5. Bedpan flushing devices shall be provided in each patient toilet room and in the soiled workrooms located in the patient nursing units.

6. An auxiliary water supply shall be available to provide potable water in case of emergencies.

(c) Hot water heating systems.

1. The hot water heating equipment shall have a sufficient capacity to supply water at the temperature and amounts indicated below:

	Use		
	Clinical	Dishwasher	Laundry
Gal/hr/bed	6 1/2	4	4 1/2
Temp. F.	125	180*	160**

*Temperature may be reduced to 160 degrees Fahrenheit, if a chloritizer is used. Required temperature must be provided throughout the wash and rinse cycles.

**Required temperature of 160 degrees Fahrenheit is that measured in the washing machine and shall be supplied so that the temperature will be maintained over the entire wash and rinse cycles.

2. Storage tank(s) shall be fabricated or corrosive-resistant metal or be lined with noncorrosive material.

(d) Drainage systems.

1. Drain lines from sinks in which acid wastes may be poured shall be fabricated from an acid-resistant material.

2. Piping over operating and delivery rooms, nurseries, food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage or condensation from necessary overhead piping systems.

3. Floor drains shall not be installed in operating and delivery rooms. Flushing rim type floor drains may be installed in cystoscopic operating rooms.

4. Building sewers shall discharge into a community sewerage system. Where such a system is not available, a facility providing sewage treatment shall be installed which conforms to all applicable local and state regulations.

(7) Nonflammable medical gas systems. Installations shall be in accordance with the requirements of NFPA 56-A and 56-F. The number, type, and location of outlets shall be as follows:

Station Outlets for Oxygen and
Vacuum (Suction) Outlets

Location	Oxygen	Vacuum
Patient room for adult medical, surgical, and for postpartum care; and pediatric care	A	A
Examination and treatment room in nursing unit	B	B
Patient room for intensive care	C	C
Nursery and pediatric nursery	A	A
General operating room	F	F
Cystoscopy and special procedure room	D	D
Recovery room	E	E
Delivery room	F	G
Labor room	A	A
Emergency treatment room	D	D

Autopsy room	---	D
Anesthesia workroom	---	D
A - One (1) outlet accessible to each bed. One (1) outlet may serve two (2) beds.		
B - One (1) outlet. Portable equipment may be considered acceptable in lieu of fixed outlets.		
C - Two (2) outlets for each bed or provide one (1) outlet with Y-fitting.		
D - One (1) outlet.		
E - One (1) outlet for each bed.		
F - Two (2) outlets.		
G - Three (3) outlets.		

Section 32. Electrical Requirements. (1) General.

(a) All material including equipment, conductors, controls, and signaling devices shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the plans. All materials shall be listed as complying with applicable standards of Underwriters' Laboratories, Inc., or other similarly established standards.

(b) All electrical installations and systems shall be tested to show that the equipment is installed and operates as planned or specified. A written record of performance tests on special electrical systems and equipment shall be supplied to the owner. Such tests shall show compliance with the governing codes and shall include conductive floors, isolated power centers, grounding continuity, and alarm systems.

(2) Switchboard and power panels. Circuit breakers or fusible switches that provide disconnecting means and overcurrent protection for conductors connected to switchboards and panel boards shall be enclosed or guarded to provide a dead front type of assembly. The main switchboard shall be located in a separate enclosure accessible only to authorized persons. The switchboard shall be convenient for use, readily accessible for maintenance, clear of traffic lanes, and in a dry ventilated space devoid of corrosive fumes or gases. Overload devices shall be suitable for operating properly in the ambient temperature conditions.

(3) Panel boards. Lighting and appliance panel boards shall be located on the same floor as the circuits they serve.

(4) Lighting.

(a) All spaces occupied by people, machinery, and equipment within buildings, and the approaches thereto, and parking lots shall have lighting.

(b) Patients' bedrooms shall have general lighting and night lighting. A reading light shall be provided for each patient. Flexible light arms shall be mechanically operated to prevent the bulb from coming in contact with the bed linen. Patients' reading lights and other fixed lights not switched at the door shall have switch controls located convenient to the luminaire. A fixed type night light, mounted at approximately sixteen (16) inches above the floor, shall be provided in each patient room. All switches for control of lighting in patient areas shall be of the quiet operating type.

(c) Operating and delivery rooms shall have general lighting in addition to local lighting provided by special lighting units at the surgical and obstetrical tables. Each fixed special lighting unit at the tables, except

portable units, shall be connected to an independent circuit.

(d) Nursing unit corridors shall have general illumination with provisions for reduction of light levels at night. Refer to Table 3, Section 33 of this regulation.

(5) Receptacles (convenience outlets).

(a) Anesthetizing locations. Each operating, delivery, and emergency room shall have at least three (3) receptacles. In locations where mobile x-ray is used, an additional outlet distinctively marked for x-ray use shall be provided.

(b) Bedroom. Each patient bedroom shall have duplex receptacles as follows: one (1) on each side of the head of the bed; one (1) for the television, if used; and one (1) on another wall. Receptacles in pediatric and psychiatric units shall be of the safety type or shall be protected by five (5) milliamperes ground fault interrupters.

(c) Nurseries. Each bassinet shall have a minimum of one (1) duplex receptacle. In special care nurseries additional receptacles shall be provided dependent on the types of equipment which will be used to provide medical care.

(d) Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart and within twenty-five (25) feet of ends of corridors. Receptacles in corridors of pediatric and psychiatric units shall be of the safety type or shall be protected by five (5) milliamperes ground fault interrupters.

(6) Equipment installation in special areas.

(a) Installation in anesthetizing locations. All electrical equipment, devices, receptacles and wiring shall be in accordance with NFPA No. 56-A as adopted by the State Fire Marshal's Office for hospitals.

(b) X-ray and gamma ray installations. X-ray stationary installations and mobile equipment shall conform to the current Kentucky standards for radiographic and radioisotope equipment and use regulations applicable to hospitals.

(c) X-ray film illuminator. At least two (2) units shall be installed in each operating room, emergency treatment room, and in the x-ray viewing room for the radiology department.

(7) Nurses' calling system.

(a) General. In general patient areas, each room shall be served by at least one (1) calling station and each bed shall be provided with a call button. Two (2) call buttons serving adjacent beds may be served by one (1) calling station. Calls shall register at an annunciator panel at the nurses' station and shall actuate a visible signal in the corridor at the patient room door, in the clean workroom, soiled workroom, the nourishment station, and the nurses' lounge of the nursing unit. In multicorridor nursing units, additional visible signals shall be installed at corridor intersections. In rooms containing two (2) or more calling stations, indicating lights shall be provided at each station. Nurses' calling systems which provide two (2) way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating.

(b) Patients' emergency. A nurses' call emergency button shall be provided for patients' use at each patient's toilet, bath, sitz bath, and shower room on the nursing unit floors. Such buttons shall be usable by a collapsed patient

lying on the floor; inclusion of a pull cord will satisfy this requirement.

(c) Intensive care. In areas such as intensive care where patients are under constant surveillance, the nurses' calling system may be limited to a bedside station that will actuate a signal that can be readily seen by the nurse.

(d) Nurses' emergency. An emergency calling station, which may be used by nurses to summon assistance, shall be provided in each operating, delivery, recovery, emergency treatment and intensive care room, in nurseries and in supervised nursing units for mental patients.

(8) Fire alarms and fire detection systems. The design and installation of these systems must be approved by the State Fire Marshal's Office.

(9) Emergency electrical.

(a) General. To provide electricity during interruption of the normal electric supply, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power.

(b) Sources. The source of this emergency electric service shall be as follows:

1. An emergency generating set, when the normal service is supplied by one (1) or more central station transmission lines.

2. An emergency generating set or a central station transmission line, when the normal electric supply is generated on the premises.

(c) Emergency generating set. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system. Generator sets shall be self-sufficient insofar as possible without dependency on public utilities that may be subject to cutoff or outages. Exception: A system of prime movers which are ordinarily used to operate other equipment and alternately used to operate the emergency generator(s) will be permitted provided that the number and arrangement of the prime movers are such that when one (1) of them is out of service (due to breakdown or for routine maintenance), the remaining prime mover(s) can operate the required emergency generator(s) and provided that the connection time requirements as listed in paragraph (e) of this subsection are met. The emergency generator set shall be of sufficient kilowatt capacity to supply all lighting and power load demands of the emergency electrical system. The power factor rating of the generator shall be not less than eighty (80) percent.

(d) Emergency electrical connections. Emergency electric service shall be provided to circuits as follows:

1. Lighting.

a. Exitways and all necessary ways of approach thereto, including exterior of exits, exit doorways, stairways, and corridors.

b. Surgical, obstetrical, and emergency room operating lights.

c. Nursery, laboratory, recovery room, intensive care areas, nursing station, medication preparation area, and labor rooms.

d. Generator set location, switch-gear location, mechanical room and boiler room.

e. Elevator cabs.

f. Night light in patient rooms.

2. Equipment. Essential to life safety and for protection of important equipment or vital materials:

- a. Nurses' calling system.
- b. Paging or speaker systems, if intended for issuing instructions during emergency conditions. Alarms required for medical gas systems.
- c. Fire pump and jockey pump, if installed.
- d. Pump for central suction system.
- e. Sewerage or sump lift pump, if installed.
- f. Blood bank refrigerator.
- g. Selected receptacles in infant nurseries, medicine dispensing areas, cardiac catheterization laboratories, angiographic laboratories, labor, operating, delivery and recovery rooms, dialysis units, intensive care units, emergency treatment rooms, basic laboratory functions, and nurses' stations.
- h. Duplex receptacles in patient corridors, and at least one (1) duplex receptacle located on the patient headwall in each patient room.
- i. Elevator service that will reach every patient floor. Manual throw over facilities shall be provided to allow temporary operation of any elevator for the release of persons who may be trapped between floors.
- j. Ventilation of operating and delivery rooms.
- k. Equipment necessary for maintaining telephone service.

3. Heating. Equipment for heating operating, delivery, labor, recovery, intensive care, and general patient rooms; except that service for heating of general patient rooms will not be required under either of the following conditions:

- a. The design temperature is higher than twenty (20) degrees Fahrenheit, based on the Median of Extremes as shown in the current edition of the ASHRAE Handbook of Fundamentals.
- b. The hospital is supplied by two (2) or more electrical services supplied from separate generating sources, or a utility distribution network having multiple power input sources and arranged to provide mechanical and electrical separation, so that a fault between the hospital and generating sources will not likely cause an interruption of the hospital service feeders.

(e) Details. The emergency electrical system shall be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency and it must be connected within ten (10) seconds through one (1) or more primary automatic transfer switches to all emergency lighting systems; alarms systems; blood banks; nurses' calling systems; equipment necessary for maintaining telephone service; pump for central suction system; and task illumination and receptacles in operating, delivery, emergency, intensive care nursing areas, nurseries, patient rooms and patient corridors. All other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification. Storage-battery-powered lights, provided to augment the emergency lighting or for continuity of lighting during the interim of transfer switching immediately following an interruption of the normal service supply, shall not be used as a substitute for the requirement of a generator. Where stored fuel is required for emergency generator operation, the storage capacity shall be

sufficient for not less than twenty-four (24) hours of continuous operation.

Section 33. Table 1 - Sound Transmission Limitations in General Hospitals. Table 2 - Pressure Relationships and Ventilation of Certain Hospital Areas. Table 3 - Lighting Levels for Hospitals.

Table 1.
Sound Transmission
Limitations in General Hospitals.

Location	Airborne Sound Transmission Class (STC) a*		Impact Insulation Class (IIC) b*
	Partitions	Floors	Floors
Patients' room to patients' room	45	45	45
Corridor to patients' room	40	45	45 c*
Public space to patients' room d*	50	50	50 c*
Service areas to patients' room e*	55	55	55 c*

a* - Sound transmission class (STC) shall be determined by tests in accordance with the methods set forth in ASTM Standard E-90 and ASTM Standard E-413.

b* - Impact insulation class (IIC) shall be determined in accordance with criteria set forth in HUD FT/TS-24, "A Guide to Airborne, Impact and Structure Borne Noise - Control in Multifamily Dwellings."

c* - Impact noise limitation applicable only when corridor, public space, or service area is over patients' room.

d* - Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar spaces.

e* - Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above patients' rooms, offices, nurses' stations and similar occupied spaces shall be effectively isolated relating to noise transmission.

Note: The requirements set forth in this table assume installation methods which will not appreciably reduce the efficiency of the assembly as tested.

Table 2.
Pressure Relationships and
Ventilation of Certain Hospital Areas.

Area Designation	Pressure Relationship to Adjacent Areas		All Supply Air From Outdoors	Minimum Air Changes per Hour
Operating room	P	---		5
Emergency operating room	P	---		5
Delivery room	P	---		5
Nursery	P	---		5
Recovery	O	---		2
Intensive Care	P	---		2
Patient room	O	---		1

Patient corridor	0	---	1
Isolation room	0	---	2
Isolation anteroom	N	---	2
Treatment room	0	---	2
X-ray, fluoroscopy room	N	---	2
X-ray, treatment room	0	---	2
Physical therapy and hydrotherapy	N	---	2
Soiled workroom	N	---	2
Clean workroom	P	---	1
Autopsy and darkroom	N	---	3
Toilet room	N	---	---
Bedpan washing	N	---	2 room
Bathroom	N	---	2
Janitor's closet	N	---	---
Sterilizer equipment room	N	---	---
Linen and trash chute rooms	N	---	---
Laboratory, general	0	---	2
Laboratory, media transfer	P	---	2
Food preparation centers	0	---	2
Dishwashing room	N	---	2
Dietary dry storage	0	---	---
Laundry, general	0	---	2
Soiled linen sorting and storage	N	---	2
Clean linen storage	P	---	1
Central medical and surgical supply:			
Soiled or decontamination room	N	---	2
Clean workroom and supply storage	P	---	2

P = Positive N = Negative 0 = Equal -- = Optional

Table 2. Continued

Area Designation	Minimum Total Air Changes Per Hour	All Air Exhausted Directly to Outdoors	Recirculated Within Room Units
Operating room	12	---	No
Emergency operating room	12	---	No
Delivery room	12	---	No
Nursery	12	---	No
Recovery	6	---	No
Intensive care	6	---	No
Patient room	4	---	---
Patient corridor	4	---	No
Isolation room	8	Yes	No
Isolation anteroom	8	Yes	No
Treatment room	8	---	No
X-ray, fluoroscopy room	8	Yes	No
X-ray, treatment room	8	---	No
Physical therapy and hydrotherapy	8	Yes	No
Soiled workroom	8	Yes	No
Clean workroom	4	---	No
Autopsy and darkroom	12	Yes	No
Toilet room	10	Yes	No

Bedpan washing room	8	Yes	No
Bathroom	10	Yes	No
Janitor's closet	10	Yes	No
Sterilizer equipment room	10	Yes	No
Linen and trash chute rooms	10	Yes	No
Laboratory, general	8	---	No
Laboratory, media transfer	8	---	No
Food preparation centers	10	---	No
Dishwashing room	10	Yes	No
Dietary dry storage	2	---	No
Laundry, general	10	---	No
Soiled linen sorting and storage	10	Yes	No
Clean linen storage	4	---	No
Central medical and surgical supply:			
Soiled or decontamination room	10	Yes	No
Clean workroom and supply storage	8	---	No

Table 3.
Lighting Levels for Hospitals

Area	Foot-candles*
Administrative and lobby areas, day	100
Administrative and lobby areas, night	20
Chapel or quiet area	30
Corridors and interior ramps	30
Corridor night lighting	10
Dining area and kitchen	50
Doorways	10
Examination and treatment room:	
General	50
Examining table	100
Exit stairways and landings	30
Janitor's closet	20
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk or counter, for charts and records	150
Nurses' medicine area, preparations and storage	100
Occupational therapy	30
Patient care unit or room, general	10
Patient care room, reading	50
Patient care room, night light (variable)	.5 to 1.5
Physical therapy	30
Stairways other than exits	50
Toilet and bathing facilities	30
Clean workroom	100
Soiled workroom	100
Nurses' lounge	30
Laundry, general	50

*Minimum on task at anytime.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort,

Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES Office of Inspector General (Proposed Amendment)

902 KAR 20:012. Hospital examination services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.400, 216B.990(1), (2), 510.010 to 510.140.

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health

Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides for a licensure requirement for the services to be provided by hospitals.

Section 1. Definition - Hospitals, General. Establishments with organized medical staffs with permanent facilities that include inpatient beds and medical services, including physician services and continuous nursing services, to provide diagnosis and treatment for patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 2. Examination Services for Victims of Sexual Offenses. (1) Hospitals offering emergency services shall provide for the examination of reported victims of sexual offenses as defined by KRS 510.010 to 510.140.

(2) The hospital shall develop procedures to be followed in the examination of reported victims of sexual offenses. The procedures shall include but need not be limited to the following:

(a) Twenty-four (24) hour on-call responsibility of the medical staff of physicians;

(b) The gathering and handling of physical evidence in accordance with the procedures of the Kentucky State Police Central Crime Laboratory;

(c) Obtaining appropriate patient consent for examination (a minor may consent to examination);

(d) Informing the victim of available services for treatment of venereal disease, pregnancy, and other medical and psychiatric problems.

(3) The hospital shall, upon the examination of a reported victim and the consent of the reported victim, submit to the Office of the Attorney General a completed examination verification form supplied by the Office of the Attorney General which includes the following:

(a) Physician signature attesting to the performance of the examination and collection of evidence;

(b) Hospital verification that appropriate law enforcement agencies have been notified of the reported sexual offense; and

(c) Hospital verification that proper confidentiality releases have been obtained.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not

affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216B.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

**CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)**

902 KAR 20:021. Facility specifications; skilled nursing.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides for the licensure requirements for the structural specifications for the construction, alteration and maintenance of skilled nursing facilities.

Section 1. Definitions. (1) "Board" means the Commission for Health Economics Control in Kentucky [Health Facilities and Health Services Certificate of Need and Licensure Board].

[(2) "Certificate of need" means an authorization by the Board to proceed with any acquisition, initiation, construction or

expansion pursuant to KRS Chapter 216B.]

(2) [(3)] "License" means an authorization issued by the Board for the purpose of operating a skilled nursing facility.

(3) [(4)] "Licensure agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Department for Human Resources.

Section 2. Preparation and Approval of Plans and Specifications. (1) Before construction is begun for the erection of new buildings or alterations to existing buildings or any change in facilities, for a skilled nursing facility, the licensee or applicant shall submit plans to the licensure agency for approval.

(2) All architectural, mechanical and electrical drawings shall bear either the seal of an architect registered in the Commonwealth of Kentucky or the seal of a professional engineer registered in the Commonwealth of Kentucky, or both.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) All such plans and specifications must be approved by the licensure agency prior to commencement of construction of new buildings or alterations of existing buildings.

(5) Plans and specifications in specific detail as required by the Kentucky Building Code shall be submitted together with architectural and/or engineering stamps as required by KRS Chapters 322 and 323, to the Department of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. All such plans and specifications must be approved by the Department of Housing, Buildings and Construction and appropriate local building permits shall be obtained prior to commencement of construction.

Section 3. Submission of Plans and Specifications. (1) First stage; schematic plans.

(a) Single line drawings of each floor shall show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room shall be noted. Drawings shall include typical patient room layouts (scaled one-fourth (1/4) inch = one (1) foot) with dimensions noted. The proposed roads and walks, service and entrance courts, parking and orientation shall be shown in a plot plan.

(b) If the project is an addition, or is otherwise related to existing buildings on the site, the plans shall show the facilities and general arrangements of those buildings.

(2) Second stage; preliminary plans. Preliminary sketch plans shall include the following:

(a) Architectural. Plans of basement and floors.

(b) Outline specifications.

1. General description of the construction, including interior finishes, types and locations of acoustical material, and special floor covering;

2. Description of the air-conditioning, heating and ventilation systems and their controls, duct and piping systems, as well as dietary, laundry, sterilizing, and other special equipment;

3. General description of electrical service including voltage, number of feeders, and whether feeders are overhead or underground.

(3) Third stage; contract documents.

(a) Working drawings. Working drawings shall be complete and adequate for bid, contract, and construction purposes. Drawings shall be prepared for each of the following branches of the work: architectural, structural, mechanical, and electrical. They shall include the following:

1. Architectural drawings.

a. Approach plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new building structures, roadways, walks, and parking areas;

b. Plan of each basement, floor and roof;

c. Elevations of each facade;

d. Sections through building;

e. Required scale and full-size details;

f. Schedule of doors, windows, and room finishes;

g. Location of all fixed equipment on a layout of typical and special rooms indicating all fixed equipment and major items of movable equipment. Equipment not included in contract shall be so indicated;

h. Conveying systems. Details of construction, machine and control spaces necessary, size and type of equipment, and utility requirements for the following: dumbwaiters - electric, hand, hydraulic; elevators - freight, passenger, patient; loading dock devices; pneumatic tube systems.

2. Structural drawings.

a. Plans for foundations, floors, roofs, and all intermediate levels with sizes, sections, and the relative location of the various structural members;

b. Dimensions of special openings;

c. Details of all special connections, assemblies, and expansion joints.

3. Mechanical drawings.

a. Heating, steam piping, and air-conditioning systems. Radiators and steam heated equipment, such as sterilizers, warmers, and steam tables; heating and steam mains and branches with pipe sizes; diagram of heating and steam risers with pipe sizes; sizes, types, and capacities of boilers, furnaces, hot water heaters with stoker; oil burners, or gas burners; pumps, tanks, boiler breeching, and piping and boiler room accessories; air-conditioning systems with required equipment, water and refrigerant piping, and ducts; supply and exhaust ventilation systems with heating/cooling connections and piping; air quantities for all room supply and exhaust ventilating duct openings.

b. Plumbing, drainage, and standpipe systems. Size and elevation of: street sewer, house sewer, house drains, street water main, and water service into the building; location and size of soil, waste, and water service with connections to house drains, clean-outs, fixtures, and equipment; size and location of hot, cold and circulating branches, and risers from the service entrance, and tanks; riser diagram of all plumbing stacks with vents, water risers, and fixture connections; gas, oxygen, and vacuum systems; standpipe and sprinkler systems where required; all fixtures and equipment that require water and drain connections.

4. Electrical drawings.

a. Electrical service entrance with switches and feeders to the public service feeders, characteristics of the light and power current, transformers and their connections if located in

the building;

b. Location of main switchboard, power panels, light panels, and equipment. Diagram of feeders and conduits with schedule of feeder breakers or switches;

c. Light outlets, receptacles, switches, power outlets, and circuits;

d. Telephone layout showing service entrance, telephone switchboard, strip boxes, telephone outlets, and branch conduits;

e. Nurses' call systems with outlets for beds, duty stations, door signal light, annunciators, and wiring diagrams;

f. Emergency electrical system with outlets, transfer switch, sources of supply, feeders, and circuits;

g. All other electrically operated systems and equipment.

(b) Specifications. Specifications shall supplement the drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment and shall include:

1. Cover or title sheet;

2. Index;

3. Sections describing materials and workmanship in detail for each class of work;

4. Access to the work. Representatives of the appropriate state agencies shall have access at all reasonable times to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

Section 4. Compliance with Building Codes, Ordinances and Regulations. (1) This section may be administered independently from other sections of this regulation.

(2) General. Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(3) The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended.

(b) Requirements for plumbing pursuant to 815 KAR 20:010 to 20:190, as amended.

(c) Requirements for air contaminants for incinerators pursuant to 401 KAR 59:020 and 401 KAR 61:010.

(d) Requirements for elevators pursuant to 803 KAR 4:010.

(e) Requirements for making buildings and facilities accessible to and usable by the physically handicapped, pursuant to KRS 198B.260 and regulations promulgated thereunder.

(4) Prior to occupancy, facility must have final approval from appropriate agencies.

(5) All facilities shall be currently approved by the Fire Marshal's Office in accordance with the Life Safety Code, before relicensure is granted by the licensure agency.

Section 5. Facility Requirements and Special Conditions. (1) Facilities shall be available to the public, staff, and patients who may be physically handicapped with special attention given to ramps, drinking fountain height, mirrors, etc.

(2) The number of beds in a nursing unit shall not exceed sixty (60) unless additional services are provided, as deemed necessary by the

licensure agency. At least two (2) rooms per nursing unit shall be designed for single person occupancy (one (1) bed) and shall have private toilet rooms with bath. At least sixty (60) percent of the beds shall be located in rooms designed for one (1) or two (2) beds.

Section 6. Nursing Unit. (1) Patient rooms. Each patient room shall meet the following requirements:

- (a) Maximum room capacity: four (4) patients;
- (b) Patient rooms shall be designed to permit no more than two (2) beds side by side parallel to the window wall. Not less than a four (4) foot space shall be provided between beds, and at least a three (3) foot space between the side of a bed and the nearest wall, fixed cabinet, or heating/cooling element. A minimum of four (4) feet is required between foot of bed and opposite wall, or foot of opposite bed in multibed rooms;
- (c) Window. All patient rooms must have windows opening to the outside. The sill shall not be higher than three (3) feet above the floor and shall be above grade. The window area shall be at least eight (8) percent of patient room floor area;
- (d) Lavatory. In single and two (2) bed rooms with private toilet room, the lavatory may be located in the toilet room. Where two (2) patient rooms share a common toilet, a lavatory shall be provided in each patient room;
- (e) Wardrobe or closet for each patient. Minimum clear dimensions: one (1) foot and ten (10) inches deep by one (1) foot and eight (8) inches wide with full length hanging space clothes rod and shelf;
- (f) Cubicle curtains, or equivalent built-in devices shall be provided, for complete privacy for each patient in each multibed room and in tub, shower and toilet rooms;
- (g) No patient room shall be located more than 120 feet from the nurses' station, the clean workroom, and the soiled workroom. No room shall be used as a patient room where the access is through another patient's room.
- (2) Patient toilet rooms.
 - (a) A toilet room shall be directly accessible from each patient room and from each central bathing area without going through the general corridor. One (1) toilet room may serve two (2) patient rooms but not more than four (4) beds. The minimum dimensions of any room containing only a toilet shall be three (3) feet by five (5) feet; bedpan flushing devices must be provided in each toilet room;
 - (b) Toilets must be easily usable by wheelchair patients. Grab bars shall be provided at all toilets;
 - (c) At least one (1) toilet for each sex shall be provided for training purposes and access by wheelchairs. This shall be accessible from the nursing corridor and may be part of the bathing area. Minimum size shall be five (5) feet by six (6) feet;
 - (d) Doors to toilet rooms shall have a minimum width of two (2) feet and ten (10) inches to admit a wheelchair.

(3) Service areas in each nursing unit. The size of each service area will depend on the number and types of beds within the unit and shall include:

- (a) Nurses' station for nurses' charting, doctors' charting, communications, and storage for supplies and nurses' personal effects;

(b) Staff lounge area. The area shall have personal storage space and a toilet room for staff;

(c) Visitors toilet room. The facility shall provide a toilet room for visitors. The staff toilet room may serve as the visitors toilet room if marked and accessible;

(d) Clean workroom for storage and assembly of supplies for nursing procedures, containing work counter, sinks and a small sterilizer;

(e) Soiled workroom containing clinical sink, work counter with two (2) compartment sink, waste receptacles, soiled linen receptacles, and a bedpan washing device;

(f) Medicine room adjacent to nurses' station with sink, refrigerator, locked storage, and facilities for preparation and dispensing of medication. (This may be designated area within clean workroom if a self-contained cabinet is provided.) The controlled substances locker must be under double lock and wired to warning light at nurses' station;

(g) Clean linen storage with enclosed storage space. (This may be a designated area within the clean workroom.);

(h) Nourishment station with storage space, sink, hot plate and refrigerator for serving between-meal nourishments. (This may serve more than one (1) nursing unit on the same floor.);

(i) Equipment storage room for storage of "IV" stands, inhalators, air mattresses, walkers, and similar bulky equipment;

(j) Patient baths. One (1) shower stall or one (1) bathtub shall be required for each fifteen (15) beds not individually served. There shall be at least one (1) free standing bathtub in each bathroom. Grab bars or patient lift with a safety device shall be provided at all bathing fixtures. Each bathtub or shower enclosure in central bathing facilities shall provide space for the private use of bathing fixture, for dressing, and for a wheelchair and attendant. Showers in central bathing facilities shall not be less than four (4) feet square, without curbs, and designed to permit use from a wheelchair. Soap dishes in showers and bathrooms shall be recessed;

(k) Stretcher and wheelchair parking area or alcove;

(l) Janitor's closet for storage of housekeeping supplies and equipment with floor receptor or service sink.

(4) Special purpose room(s) for consultation, examination, treatment, and therapeutic and nursing procedures. This may serve more than one (1) nursing unit on the same floor. Provide lavatory, storage, and space for treatment table. Minimum floor area shall be nine (9) feet by eleven (11) feet.

(5) Patients' dining, TV viewing and recreation areas.

(a) The total areas set aside for these purposes shall be not less than thirty (30) square feet per bed for the first fifty (50) beds and twenty (20) square feet per bed for all beds in excess of fifty (50). Additional space shall be provided for outpatients if they participate in a day care program;

(b) Storage shall be provided for recreational equipment and supplies (e.g., wall cabinets and closets).

Section 7. Therapy Units. (1) If the facility has a physical therapy unit the following shall be provided (depending on the program):

- (a) Office (may also serve for occupational therapy office);
- (b) Exercise and treatment areas with sink or lavatory and cubicle curtains around treatment areas;
- (c) Hydrotherapy areas with cubicle curtains around treatment areas;
- (d) Storage for supplies and equipment;
- (e) Toilet rooms located for convenient access by physical therapy patients (may also serve occupational therapy patients).
- (2) Facilities with 100 beds or more shall have an occupational therapy unit which shall include:
 - (a) Office space (may be shared with physical therapy office);
 - (b) Therapy area with sink or lavatory;
 - (c) Storage for supplies and equipment;
 - (d) Toilet room (not required if other toilet facilities are convenient);
 - (e) Personal care room with shampoo sink and space for barber chair.

Section 8. Dietary Department. If a commercial service will be used or meals will be provided by an adjacent hospital, dietary areas and equipment shall be designed to provide for sanitary storage, processing, and handling, otherwise the following shall be provided:

- (1) Food preparation center with a lavatory but no mirror;
- (2) Food serving facilities to accommodate patients and staff;
- (3) Dishwashing room with a commercial-type dishwashing equipment and a lavatory;
- (4) Pot-washing facilities;
- (5) Refrigerated storage to accommodate a three (3) day supply;
- (6) Dry storage to accommodate a three (3) day supply;
- (7) Cart cleaning facilities;
- (8) Cart storage area;
- (9) Waste disposal facilities;
- (10) Can-washing facilities;
- (11) Staff dining facilities;
- (12) Patient dining facilities;
- (13) Dietician's office (may be omitted in facilities with less than 100 beds if desk space is provided in kitchen);
- (14) Janitor's closet with storage for housekeeping supplies and equipment, floor receptor or service sink;
- (15) Toilet room which is conveniently accessible for dietary staff with a two (2) door separation from food preparation area or dining areas.

Section 9. Administration Department. The facility shall have adequate administrative, public, and staff facilities (e.g., offices, lobby, toilet facilities) to accommodate the needs of the public, patients, and staff without interfering with the provision of medical care services.

Section 10. Laundry. The following shall be included:

- (1) Soiled linen room;
- (2) Clean linen and mending room;
- (3) Linen cart storage;
- (4) Lavatories accessible from soiled, clean, and processing rooms;
- (5) Laundry processing room with commercial type equipment shall be sufficient to take care of seven (7) days' needs within the workweek;

- (6) Janitor's closet with storage for housekeeping supplies and equipment and a floor receptor or service sink;

(7) Storage for laundry supplies. (Items of subsections (5), (6), and (7) of this section need not be provided if laundry is processed outside the facility.)

Section 11. Storage and Service Areas. The following shall be included:

- (1) Central storage room(s). Provide at least ten (10) square feet per bed for the first fifty (50) beds and five (5) square feet per bed for all beds over fifty (50), to be concentrated in one (1) area;
- (2) Locker rooms. Provide locker rooms with toilets, and lavatories for staff and volunteers and rest space for females;
- (3) Engineering service and equipment areas. The following shall be provided:
 - (a) Boiler room;
 - (b) Engineer's office (may be omitted in facilities of less than 100 beds);
 - (c) Mechanical and electrical equipment room(s) (can be combined with boiler room);
 - (d) Maintenance shop(s). At least one (1) room shall be provided;
 - (e) Storage room for building maintenance supplies and paint storage;
 - (f) Storage room for housekeeping equipment (need not be provided if space is available in janitor's closets or elsewhere);
 - (g) Toilet and shower rooms (may be omitted in facilities of less than 100 beds);
 - (h) Incinerator space. The incinerator, if required, shall be in a separate room, or in a designated area within the boiler room, or outdoors;
 - (i) Refuse room for holding trash prior to disposal located convenient to service entrance;
 - (j) Yard equipment storage room for yard maintenance equipment and supplies.

Section 12. Details and Finishes. The facility shall be designed for maximum safety for the occupants to minimize the incidence of accidents. Hazards such as sharp corners shall be avoided. All details and finishes shall meet the following requirements:

- (1) Details.
 - (a) Doors to patient toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of two (2) feet and ten (10) inches;
 - (b) Such items as drinking fountains, telephone booths and vending machines shall be located so that they do not project into the required width of exit corridors;
 - (c) Handrails shall be provided on both sides of corridors used by patients in facilities with a clear distance of one and one-half (1 1/2) inches between handrail and wall;
 - (d) All doors to patient room toilet rooms and patient room bathrooms shall swing outward or shall be equipped with hardware which will permit access in any emergency;
 - (e) All doors opening onto corridors shall be swing-type except elevator doors. Alcoves and similar spaces which generally do not require doors are excluded from this requirement;
 - (f) Thresholds and expansion joint covers, if used, shall be flush with the floor;
 - (g) Grab bars and accessories in patient toilet, shower, and bathrooms shall have sufficient strength and anchorage to sustain a

load of 250 pounds for five (5) minutes;

(h) Lavatories intended for use by patients shall be installed to permit wheelchairs to slide under;

(i) The location and arrangement of lavatories and sinks with blade handles intended for hand-washing purposes shall provide sixteen (16) inches clearance each side of center line of fixture;

(j) Mirrors shall be arranged for convenient use by patients in wheelchairs as well as by patients in standing position;

(k) Towel dispensers shall be provided at all lavatories and sinks used for hand-washing;

(l) If linen and refuse chutes are used, they shall be designed as follows:

1. Minimum diameter of gravity-type chutes shall be two (2) feet;

2. Chutes shall extend at least four (4) feet above the roof and shall be covered by a metal skylight glazed with thin plain glass or plastic.

(m) Ceiling heights.

1. The boiler room ceiling shall not be less than two (2) feet and six (6) inches above the main boiler header and connecting piping with nine (9) feet headroom under piping for maintenance and access;

2. Ceilings in corridors, storage rooms, patients' toilet room, and other minor rooms shall not be less than seven (7) feet and six (6) inches;

3. Ceilings in all other rooms shall not be less than eight (8) feet.

(n) Boiler room, food preparation centers, and laundries shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature of eighty-five (85) degrees Fahrenheit.

(o) Noise reduction criteria. Provision shall be made to minimize sound transmission:

1. Corridors in patient areas;

2. Nurses' stations;

3. Utility rooms;

4. Floor pantries; and

5. Lobbies and recreation areas.

(p) Special attention shall be given to sound transmission from boiler rooms, mechanical rooms, and kitchen, to patient bedroom areas.

(2) Finishes.

(a) All floors shall be easily cleanable and shall have the wear resistance appropriate for the location involved. Floors in kitchen and related spaces shall be waterproof and grease-proof. In all areas where floors are subject to wetting, they shall have a nonslip finish. Carpeting is not permitted in the following areas: kitchen, dishwashing room, soiled utility room, janitor's closet, soiled linen rooms, storage room, bathrooms, public toilet rooms, patient toilet rooms, hydrotherapy rooms, treatment room, and any other room where the floor is subject to repeated wetting or soiling.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an unbroken surface.

(c) Walls generally shall be washable, and in the immediate area of plumbing fixtures, the finish shall be moisture-proof. Wall bases in dietary areas shall be free of spaces that can harbor insects.

(d) Ceilings generally shall be washable or easily cleanable. This requirement does not apply to boiler rooms, mechanical and building equipment rooms, shops and similar spaces.

Section 13. Elevators. All facilities where either patient beds or inpatient facilities such as diagnostic, recreation, patient dining or therapy rooms are located other than the first floor, shall have electric or electrohydraulic elevators as follows:

(1) Number of elevators. All facilities with patient beds or residential facilities located on any floor other than the first floor shall have at least one (1) hospital-type elevator and such additional elevators as determined by the licensure agency from a study of the facility plan and the estimated vertical transportation requirements.

(2) Cars and platforms. Cars of hospital-type elevators shall have inside dimensions that will accommodate a patient's bed and attendants and shall be at least five (5) feet wide by seven (7) feet and six (6) inches deep. Car doors shall have a clear opening of not less than three (3) feet and eight (8) inches. Cars of all other required elevators shall have a clear opening of not less than three (3) feet.

(3) Leveling. Elevators shall have automatic leveling of the two (2) way automatic maintaining type with accuracy within plus or minus one-half (1/2) inch.

Section 14. Construction. Foundations shall rest on natural solid ground if a satisfactory soil is available at reasonable depths. Proper soil bearing values shall be established in accordance with recognized standards. If solid ground is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement.

Section 15. Mechanical Requirements. (1) General. Prior to completion of the contract and final acceptance of the facility, the architect and/or engineer shall obtain certification from the contractor that all mechanical systems have been tested and that the installation and performance of these systems conform to the requirements of the plans and specifications.

(2) Steam and hot water systems.

(a) Boilers. If boilers are used, a minimum of two (2) must be provided. The combined capacity of boilers, based upon the published Steel Boiler Institute of Boiler and Radiator Manufacturer's net rating, must be able to supply 150 percent of the normal requirements of all systems and equipment.

(b) Boiler accessories. Boiler feed pumps, condensate return pumps, fuel oil pumps, and circulating pumps shall be connected and installed to provide standby service when any pump breaks down.

(3) Temperatures and ventilating systems.

(a) Temperatures. A minimum temperature of seventy-two (72) degrees Fahrenheit shall be provided for in all occupied areas in winter conditions. A maximum temperature of eighty-five (85) degrees Fahrenheit shall be provided for in occupied areas in summer conditions.

(b) Ventilation system details. All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown in Section 17, Table 1 of this regulation, shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates if they are required to meet

design conditions.

1. Outdoor ventilation air intakes, other than for individual room units, shall be located as far away as practicable but not less than twenty-five (25) feet from any ventilating system or combustion equipment. The bottom of outdoor intakes serving central air systems shall be located as high as possible but not less than eight (8) feet above the ground level or, if installed through the roof, three (3) feet above roof level.

2. The ventilation systems shall be designed and balanced to provide the general pressure relationship to adjacent areas as shown in Section 17, Table 1 of this regulation.

3. Room supply air inlets, recirculation, and exhaust air outlets installed in nonsensitive areas shall be located not less than three (3) inches above the floor.

4. Corridors shall not be used to supply air to or exhaust air from any room, except that exhaust air from corridors may be used to ventilate bathrooms, toilet rooms, or janitor's closets opening directly into corridors.

5. Filters. Central systems designed for recirculation of air shall be equipped with a minimum of two (2) filter beds. Filter bed #1 shall be located upstream of the conditioning equipment and shall have a minimum efficiency of thirty (30) percent. Filter bed #2 shall be located downstream of the conditioning equipment and shall have a minimum efficiency of ninety (90) percent. Central air systems using 100 percent outdoor air shall be provided with filters rated at eighty (80) percent efficiency. The above filter efficiencies shall be warranted by the manufacturer and shall be based on the National Bureau of Standards Dust Spot Test Method with Atmospheric Dust. Filter frames shall be durable and carefully dimensioned and shall provide an airtight fit with the enclosing duct work. All joints between filter segments and the enclosing duct work shall be gasketed and sealed to provide a positive seal against air leakage.

6. A manometer shall be installed across each filter bed serving central air systems.

7. Cold-air ducts shall be insulated wherever necessary to maintain the efficiency of the system and to minimize condensation problems.

8. The air from dining areas may be used to ventilate the food preparation areas only after it has passed through a filter with eighty (80) percent efficiency.

9. Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment and required temperatures in the facility.

(4) Plumbing and other piping systems.

(a) Lavatories and sinks required in patient care areas shall have the water supply spout mounted so that its discharge point is a minimum distance of five (5) inches above the rim of the fixture. All fixtures used by medical and nursing staff, and all lavatories used by patients and food handlers shall be trimmed with valves which can be operated without the use of hands. Where blade handles are used for this purpose, they shall be at a distance from the center line of the sink to be operational.

(b) Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(5) Water supply system shall meet the following requirements:

(a) Systems shall be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of fifteen (15) pounds per square inch during maximum demand periods.

(b) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(c) Hot, cold and chilled water piping and waste piping on which condensation may occur shall be insulated. Insulation of cold and chilled water lines shall include an exterior vapor barrier.

(d) Backflow preventers (vacuum breakers) shall be installed on hose bibbs and on all fixtures to which hoses or tubing can be attached such as janitor's sinks and bedpan flushing attachments.

(e) Flush valves installed on plumbing fixtures shall be of a quiet operating type, equipped with silencers.

(f) Bedpan flushing devices shall be provided.

(g) Hot water distribution systems shall be arranged to provide hot water at each fixture at all times.

(h) Plumbing fixtures which require hot water and which are intended for patient use shall be supplied with water which is controlled to provide a maximum water temperature of 110 degrees Fahrenheit at the fixture.

(i) Piping over food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage of, or condensation from, necessary overhead piping systems.

(6) Hot water heaters and tanks.

(a) The hot water heating equipment shall have sufficient capacity to supply the water at the temperature and amounts indicated below:

	Use		
	Clinical	Dishwasher	Laundry
Gal/hr/bed	6 1/2	4	4 1/2
Temp. F.	100-110	180*	140-180**

*Temperature may be reduced to 140 if chloritizer is used.

**If the temperature used is below 180, the facility shall utilize detergents and other additives to insure that the linens will be adequately cleaned.

(b) Storage tank(s) shall be provided and shall be fabricated of corrosion-resistant metal, or have noncorrosive lining.

(7) Plumbing approval. Prior to final approval of the plans and specifications by the licensure agency, the plumbing plans and specifications must be approved by the Division of Plumbing, Department of Housing, Buildings and Construction.

Section 16. Electrical Requirements. (1) Electrical requirements of the Kentucky Building Code shall apply where applicable.

(2) The wiring in each facility shall be inspected by a certified electrical inspector and a certificate of approval shall be issued to the facility prior to occupancy; however, the wiring in existing buildings shall be approved by a certified electrical inspector only when the building has not been previously so approved

for health care occupancy or where the state Fire Marshal finds that a hazardous condition exists.

(3) Switchboard and power panels. All breakers and switches shall be indexed.

(4) Lighting.

(a) All spaces occupied by people, machinery, and equipment within buildings, and the approaches thereto, and parking lots shall have electric lighting.

(b) Patients' bedrooms shall have general lighting and night lighting. A reading light shall be provided for each patient. A fixed receptacle type night light mounted approximately sixteen (16) inches above the floor, shall be provided in each patient room. Patients' reading lights and other fixed lights not switched at the door shall have switch controls convenient for use at the luminaire. All switches for control of light in patient areas shall be of the quiet operating type.

(c) Lighting levels for the facility shall comply with the requirements of Section 17, Table 2 of this regulation.

(5) Receptacles. Convenience outlets.

(a) Bedroom. Each patient bedroom shall have duplex receptacles as follows: one (1) each side of the head of each bed (for parallel adjacent beds, only one (1) receptacle is required between the beds); receptacles for luminaires, television and motorized beds, if used, and one (1) receptacle on another wall.

(b) Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart in all corridors and within twenty-five (25) feet of ends of corridors.

(6) Nurses' calling systems. A nurses' calling station shall be installed at each patient bed and in each patient toilet, bath, and shower room. The nurses' call in toilet, bath, or shower rooms shall be an emergency call. All calls shall register at the nurses' station and shall actuate a visible signal in the corridor at the patients' door, in the clean workroom, soiled workroom, and nourishment station of the nursing unit. Nurses' call systems which provide two (2) way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating.

(7) Emergency electric service.

(a) General. To provide electricity during an interruption of the normal electric supply that could affect the nursing care, treatment, or safety of the occupants, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power.

(b) Sources. The source of this emergency electric service shall be as follows:

1. An emergency generating set, when the normal service is supplied by one (1) or more central station transmission lines;

2. An emergency generating set or a central station transmission line, when the normal electric supply is generated on the premises.

(c) Emergency generating set.

1. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical systems. The emergency generator set shall be of sufficient kilowatt capacity to supply all emergency electrical connections itemized in paragraph (d) below.

2. In facilities constructed prior to the

effective date of this regulation which are supplied by at least two (2) dedicated and separate utility service feeders, an emergency generating set is not required.

(d) Emergency electrical connections. Emergency electric service shall be provided to circuits as follows:

1. Lighting.

a. Exitways and all necessary ways of approach thereto, including exit signs and exit direction signs, exterior of exits, exit doorways, stairways, and corridors;

b. Dining and recreation rooms;

c. Nursing station and medication preparation area;

d. Generator set location, switch-gear location, and boiler room;

e. Elevator; and

f. Night lights in patient rooms.

2. Equipment. Essential to life safety and for protection of important or vital materials.

a. Nurses' calling systems;

b. Sewerage or sump lift pump, if installed;

c. At least one (1) duplex receptacle in each patient room;

d. One (1) elevator, where elevators are used for vertical transportation of patients. Provide manual switch-over to operate other elevators;

e. Equipment such as burners and pumps necessary for operation of one (1) or more boilers and their necessary auxiliaries and controls, required for heating and sterilization; and

f. Equipment necessary for maintaining telephone service.

3. Heating. Where electricity is the only source of power normally used for space heating, the emergency service shall provide for heating of patient rooms. Emergency heating of patient rooms will not be required in areas where the facility is supplied by at least two (2) utility service feeders, each supplied by separate generating sources or a network distribution system fed by two (2) or more generators, with the facility feeders so routed, connected, and protected that a fault any place between the generators and the facility will not likely cause an interruption of more than one (1) of the facility service feeders.

(e) Details. The emergency system shall be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency and connected within ten (10) seconds through one (1) or more primary automatic transfer switches to all emergency lighting, all alarms, nurses' call, all equipment necessary for maintaining telephone service, and receptacles in patient corridors. All other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification. Storage-battery-powered lights shall not be used as a substitute for the requirement of a generator. Where fuel is normally stored on the site, the storage capacity shall be sufficient for twenty-four (24) hour operation of required emergency electric services. Where fuel is normally piped underground to the site from a utility distribution system, storage facilities on the

site will not be required.

Section 17. Tables. Table 1, Pressure Relationships and Ventilation of Certain Skilled Nursing Facilities Areas; and Table 2, Lighting Levels for Skilled Nursing Facilities.

Table 1.
Pressure Relationships and Ventilation
of Certain Skilled Nursing Facilities Areas.

Area Designation	Pressure Relationship to Adjacent Areas	All Supply Air From Outdoors	Minimum Air Changes of Outdoor Air per Hour
Patient room	0	--	1
Patient area corridor	0	--	4
Treatment room	0	Yes	6
Physical therapy and hydrotherapy	-	--	6
Dining and recreation areas	0	--	4
Soiled workroom	-	--	4
Clean workroom	+	Yes	4
Toilet room	-	--	--
Bedpan room	-	--	--
Bathroom	-	--	--
Janitor's closet	-	--	--
Sterilizer equipment room	-	--	--
Linen and trash chute rooms	-	--	--
Food preparation center	0	--	10
Dishwashing room	-	--	--
Dietary dry storage	0	--	--
Laundry, general	0	Yes	10
Soiled linen sorting and storage	-	--	--
Clean linen storage	+	--	2

+ = Positive - = Negative 0 = Equal -- = Optional

Table 1. Continued

Area Designation	Minimum Total Air Changes Per Hour	All Air Exhausted Directly to Outdoors
Patient room	4	--
Patient area corridor	4	--
Treatment room	6	Yes
Physical therapy and hydrotherapy	6	--
Dining and recreation areas	4	--
Soiled workroom	4	Yes
Clean workroom	4	--
Toilet room	10	Yes
Bedpan room	10	Yes
Bathroom	10	Yes
Janitor's closet	10	Yes
Sterilizer equipment room	10	Yes
Linen and trash chute rooms	10	Yes
Food preparation center	10	Yes
Dishwashing room	10	Yes
Dietary dry storage	2	--
Laundry, general	10	Yes
Soiled linen sorting and storage	10	Yes
Clean linen storage	2	--

Table 2.
Lighting Levels for
Skilled Nursing Facilities.

Area	Foot-candles*
Administrative and lobby areas, day	50
Administrative and lobby areas, night	20
Barber and beautician areas	50
Chapel or quiet area	30
Corridors and interior ramps	20
Corridor night lighting	3
Dining area and kitchen	30
Doorways	10
Exit stairways and landings	5
Janitor's closet	15
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Patient care unit (or room), general	10
Patient care room, reading	30
Patient care room, night light (variable)	.5 to 1.5
Recreation area (floor level)	50
Stairways other than exits	30
Toilet and bathing facilities	30
Utility room, general	20
Utility room, work counter	50

*Minimum on task at anytime.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 11, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:031. Facility specifications; personal care homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides for the licensure requirements for the facility specifications for the construction, alteration and maintenance of personal care homes.

Section 1. Definitions. (1) "Board" means the Commission for Health Economics Control in Kentucky [Health Facilities and Health Services Certificate of Need and Licensure Board].

[(2) "Certificate of need" means an authorization by the board to proceed with any acquisition, initiation, construction or expansion pursuant to KRS Chapter 216B.]

(2) [(3)] "License" means an authorization issued by the board for the purpose of operating a personal care home and offering personal care service.

(3) [(4)] "Licensure agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Human Resources Cabinet.

Section 2. Preparation and Approval of Plans and Specifications. After receiving certificate of need from the board, the following procedures shall be followed:

(1) Before construction is begun for the erection of new buildings or alterations to existing buildings or any changes in facilities, for a personal care facility, the licensee or applicant shall submit plans in the detail specified in Section 3 of this regulation to the licensure agency for approval.

(2) All architectural, mechanical and electrical drawings shall bear either the seal of an architect registered in the Commonwealth of Kentucky or the seal of a professional engineer registered in the Commonwealth of Kentucky, or both.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) All such plans and specifications must be approved by the licensure agency prior to commencement of construction of new buildings or alterations of existing buildings.

(5) Plans and specifications in specific detail as required by the Kentucky Building Code shall be submitted together with architectural and/or engineering stamps as required by KRS Chapters 322 and 323, to the Department of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. All such plans and specifications must be approved by the Department of Housing, Buildings and Construction, and appropriate local building permits shall be obtained prior to commencement of construction.

Section 3. Submission of Plans and Specifications. (1) First stage; schematic plans (required only if facility exceeds 100 beds).

(a) Single line drawings of each floor shall show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room shall be noted. Drawings shall include typical resident room layouts (scaled one-fourth (1/4) inch = one (1) foot) with dimensions noted. The proposed roads and walks, service and entrance courts, parking and orientation shall be shown in a plot plan.

(b) If the project is an addition, or is otherwise related to existing buildings on the site, the plans shall show the facilities and general arrangements of those buildings.

(2) Second stage; preliminary plans. Preliminary sketch plans shall include the following:

(a) Architectural: plans of basement and floors.

(b) Outline specifications.

1. General description of the construction, including interior finishes, types and locations of acoustical material, and special floor covering;

2. Description of the air-conditioning, heating, and ventilation systems and their controls, duct and piping systems; and dietary, laundry, and other special equipment;

3. General description of electrical service including voltage, number of feeders, and whether feeders are overhead or underground.

(3) Third stage; contract documents.

(a) Working drawings. Working drawings shall be complete and adequate for bid, contract, and construction purposes. Drawings shall be prepared for each of the following branches of the work: architectural, structural, mechanical, and electrical. They shall include the following:

1. Architectural drawings.

a. Approach plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new building structures, roadways, walks, and parking areas;

b. Plan of each basement, floor and roof;

c. Elevations of each facade;

d. Sections through building;

e. Required scale and full-size details;

f. Schedule of doors, windows, and room finishes;

g. Equipment. Location of all fixed equipment. Layout of typical and special rooms indicating all fixed equipment and major items of movable equipment. Equipment not included in contract shall be so indicated;

h. Conveying systems. Details of construction, machine and control spaces necessary, size and type of equipment, and utility requirements for the following: dumbwaiters: electric, hand, hydraulic; elevators: freight, passenger, patient; loading dock devices; pneumatic tube systems.

2. Structural drawings.

a. Plans for foundations, floors, roofs, and all intermediate levels with sizes, sections, and the relative location of the various structural members;

b. Dimensions of special openings;

c. Details of all special connections, assemblies, and expansion joints.

3. Mechanical drawings.

a. Heating, steam piping, and air-conditioning systems: radiators and steam heated equipment, such as warmers and steam tables; heating and steam mains and branches with pipe sizes; diagram of heating and steam risers with pipe sizes; sizes, types, and capacities of boilers, furnaces, hot water heaters with stokers, oil burners, or gas burners; pumps, tanks, boiler breeching, and piping, and boiler room accessories; air-conditioning systems with required equipment, water and refrigerant piping and ducts; supply and exhaust ventilation systems with heating/cooling connections and piping; air quantities for all room supply and exhaust ventilating duct openings.

b. Plumbing, drainage, and standpipe systems. Size and elevation of: street sewer, house sewer, house drains, street water main, and water service into the building. Location and size of soil, waste, and water service with connections to house drains, clean-outs, fixtures, and equipment. Size and location of hot, cold, and circulating branches, and risers from the service entrance, and tanks; riser diagram of all plumbing stacks with vents, water risers, and fixture connections. Standpipe and sprinkler systems where required; all fixtures and equipment that require water and drain connections.

4. Electrical drawings.

a. Electric service entrance with switches and feeders to the public service feeders, characteristics of the light and power current, transformers and their connections if located in the building;

b. Location of main switchboard, power panels, light panels, and equipment. Diagram of feeders and conduits with schedule of feeder breakers or switches;

c. Light outlets, receptacles, switches, power outlets, and circuits;

d. Telephone layout showing service entrance, telephone switchboard, strip boxes, telephone outlets, and branch conduits;

e. Nurses' call systems with outlets for residents' beds and rest rooms; duty station, door signal light and wiring diagrams (this is optional but required in all higher levels of care);

f. Emergency electrical system with outlets, transfer switch, sources of supply, feeders, and circuits;

g. All other electrically operated systems and equipment.

(b) Specifications. Specifications shall supplement the drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment and shall include:

1. Cover or title sheet;

2. Index;

3. Sections describing materials and workmanship in detail for each class of work;

4. General conditions, which must contain the following requirements: Access to the work. Representatives of the appropriate state agencies will have access at all reasonable times to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

Section 4. Compliance with Building Codes, Ordinances and Regulations. (1) This section may be administered independently from other sections of this regulation.

(2) General. Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(3) The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended.

(b) Requirements for plumbing pursuant to 815 KAR 20:010-190, as amended.

(c) Requirements for air contaminants for incinerators pursuant to 401 KAR 59:020 and 401 KAR 61:010.

(d) Requirements for elevators pursuant to 815 KAR 4:010.

(e) Requirements for making buildings and facilities accessible to and usable by the physically handicapped, pursuant to KRS 198B.260 and regulations promulgated thereunder.

(4) Prior to occupancy, the facility shall have final approval from appropriate agencies.

(5) All facilities shall be currently approved by the Fire Marshal's Office in accordance with the Life Safety Code before relicensure is granted by the licensure agency.

Section 5. Facility Requirements and Special Conditions. (1) Facilities shall be available to the public, staff, and residents who may be physically handicapped with special attention given to ramps, drinking fountain height, mirrors, etc.

(2) At least sixty-six (66) percent of the beds in the facility shall be located in rooms designed for one (1) or two (2) beds.

(3) Access to the facility shall be by means of a paved or gravel roadway which shall be available for use by traffic prior to a license being issued to a facility for occupancy.

Section 6. Resident Unit. The following shall be included:

(1) Resident rooms. Each room shall meet the following requirements:

(a) Maximum room capacity: four (4) residents.

(b) Resident rooms shall be designed to permit not less than a three (3) foot space between beds, and at least a three (3) foot space between the side of the bed and the nearest wall, fixed cabinet, or heating/cooling unit.

Beds shall be at least thirty-six (36) inches wide. A minimum of three (3) feet is required between the foot of the bed and opposite wall or foot of opposite bed in multibed rooms.

(c) Windows. All resident rooms shall have windows opening to the outside. The sill shall not be higher than three (3) feet above the floor and shall be above grade. Window area shall be at least eight (8) percent of resident room floor area.

(d) Lavatory. In single and two (2) bed rooms with a private toilet room, the lavatory may be located in the toilet room. Where two (2) residents' rooms share a common toilet, a lavatory shall be provided in each resident room.

(e) Wardrobe or closet for each resident. Minimum clear dimensions: one (1) foot and ten (10) inches deep by one (1) foot and eight (8) inches wide with full length hanging space; provide clothes rod and shelf.

(f) In multibed rooms a method of assuring visual privacy for each resident shall be provided.

(2) Resident toilet and bathing areas for existing facilities.

(a) Where a centralized bathing area is used, the facility shall provide for each sex on every floor the following: one (1) shower stall or one (1) bathtub for each twelve (12) residents or major fraction thereof is required. One (1) shower stall shall be designed for wheelchair use.

(b) Where a centralized toilet area is used, the facility shall provide for each sex on every floor the following: one (1) toilet for each eight (8) residents or fraction thereof and one (1) lavatory for each sixteen (16) residents or fraction thereof is required. Toilets must be separated by a permanent partition and at least one (1) toilet for each sex must be designed for wheelchair use.

(c) The centralized bathing and centralized toilet area may be combined into one (1) location provided provision is made for the privacy of sexes.

(d) Grab bars or patient lift with a safety device shall be provided at all tubs. Grab bars shall be provided at all shower stalls and toilets.

(3) Service areas for each floor. The size and location of each service area will depend on the maximum number of residents the floor was designed for and shall include:

(a) Duty station. An adequate centralized area must be provided for charting and other required administrative functions.

(b) Staff lounge area. The area shall have personal storage space and a toilet room for staff.

(c) Visitors toilet room. The home shall provide a toilet room for visitors. The staff toilet room may serve as the visitors toilet room if marked and accessible.

(d) Medication area, with sink, refrigerator, locked storage and facilities for preparation of medication. Controlled substances locker must be under double lock.

(e) Clean linen storage. Enclosed storage area.

(f) Janitor's closet. Storage of housekeeping supplies and equipment. Floor receptor or service sink.

(4) Residents' dining, TV viewing, and recreation areas.

(a) The total areas set aside for these purposes shall be not less than thirty (30)

square feet per bed for the first fifty (50) beds and twenty (20) square feet per bed for all beds in excess of fifty (50).

(b) Storage shall be provided for recreational equipment and supplies (such as wall cabinets or closets).

Section 7. Dietary Department. If a commercial service will be used or meals will be provided by an adjacent hospital, dietary areas and equipment shall be designed to accommodate the requirements for sanitary, efficient and safe storage, processing, and handling, otherwise the following shall be provided:

(1) Food preparation center. Provide a lavatory but do not provide a mirror.

(2) Food serving facilities to accommodate residents and staff.

(3) Dishwashing and pot-washing facilities. Dish and utensil washing equipment will be used that will result in sanitized serviceware and will prevent recontamination.

(4) Refrigerated storage shall accommodate a three (3) day supply minimum.

(5) Dry storage shall accommodate a three (3) day supply minimum.

(6) Food carts. If the home uses food carts, space shall be provided in the kitchen or in a separate storage area for the cleaning and storage of food carts.

(7) Janitor's closet. Storage for housekeeping supplies and equipment; floor receptor or service sink.

(8) A toilet room conveniently accessible to the dietary department. If a toilet room is built in this department, it must have two (2) door separation from food preparation area or dining areas.

Section 8. Administration Department. Sufficient space shall be allotted for administrative operations. The areas may include: an administrator's office, business office, information center, admitting and medical records.

Section 9. Laundry. The following shall be included:

(1) Soiled linen room.

(2) Clean linen room.

(3) Lavatory. Accessible from soiled, clean, and processing rooms.

(4) Laundry processing room and storage for laundry supplies (need not be provided if laundry is processed outside the facility).

Section 10. Storage and Service Areas. The following shall be included:

(1) Sufficient storage space shall be provided.

(2) Engineering service and equipment areas. The following shall be provided where applicable:

(a) Boiler room;

(b) Mechanical and electrical equipment room(s) (can be combined with boiler room);

(c) Storage room for housekeeping equipment (need not be provided if space is available in janitor's closets or elsewhere);

(d) Refuse area, for holding trash prior to disposal, shall be located convenient to service entrance.

Section 11. Details and Finishes. A high degree of safety for the occupants in minimizing the incidence of accidents shall be provided. Hazards such as sharp corners shall be avoided.

All details and finishes shall meet the following requirements:

(1) Details.

(a) Handrails shall be provided on both sides of corridors used by residents in personal care with a clear distance of one and one-half (1 1/2) inches between handrail and wall.

(b) All doors opening onto corridors shall be swing-type except elevator doors. Alcoves and similar spaces which generally do not require doors are excluded from this requirement.

(c) All doors to resident room toilet rooms shall swing outward or shall be equipped with hardware which will permit access in any emergency.

(d) Thresholds and expansion joint covers, if used, shall be flush with the floor.

(e) Grab bars and accessories in toilet, shower, and bathrooms shall have sufficient strength and anchorage to sustain a load of 250 pounds for five (5) minutes.

(f) Lavatories intended for use by residents shall be installed to permit wheelchairs to slide under.

(g) Mirrors shall be arranged for convenient use by residents in wheelchairs as well as by residents in standing position.

(h) Towel rack or dispensers shall be provided at all lavatories and sinks used for hand-washing.

(i) Ceiling heights.

1. Boiler room. Not less than two (2) feet and six (6) inches above the main boiler header and connecting piping with adequate headroom under piping for maintenance and access;

2. Corridors, storage rooms, residents' toilet room, and other minor rooms. Not less than seven (7) feet and six (6) inches;

3. All other rooms. Not less than eight (8) feet.

(k) Boiler room, food preparation centers, and laundries shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature of eighty-five (85) degrees Fahrenheit.

(l) Noise reduction criteria. The ceilings of the following areas shall be designed to reduce noise transmission:

1. Corridors in resident areas;
2. Work areas such as utility rooms;
3. Lobbies and recreation areas.

(m) Special attention shall be given to sound transmission from boiler rooms, mechanical rooms, and kitchen, to resident bedroom areas.

(2) Finishes.

(a) Floors generally shall be easily cleanable and shall have the wear resistance appropriate for the location involved. Floors in kitchen and related spaces shall be waterproof and grease-proof. In all areas where floors are subject to wetting, they shall have a nonslip finish.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an unbroken surface.

(c) Walls generally shall be washable and in the immediate area of plumbing fixtures, the finish shall be moisture-proof. Wall bases in dietary areas shall be free of spaces that can harbor insects.

(d) Ceilings generally shall be washable or easily cleanable. This requirement does not apply to boiler rooms, mechanical and building equipment rooms, shops and similar spaces.

Section 12. Elevators. Elevators shall conform with 815 KAR 4:010. Elevators, where required. All facilities where either resident beds or residential facilities such as recreation, resident dining or therapy rooms are located on other than the first floor, shall have electric or electrohydraulic elevators as follows:

(1) Number of elevators. All homes with resident beds or residential facilities located on any floor other than the first floor shall have at least one (1) hospital-type elevator and such additional elevators as determined by the licensure agency from a study of the facility plan and the estimated vertical transportation requirements.

(2) Cars and platforms. Cars of hospital-type elevators shall have inside dimensions that will accommodate a resident's bed and attendants and shall be at least five (5) feet wide by seven (7) feet and six (6) inches deep; car doors shall have a clear opening of not less than three (3) feet and eight (8) inches. Cars of all other required elevators shall have a clear opening of not less than three (3) feet.

(3) Leveling. Elevators shall have automatic leveling of the two (2) way automatic maintaining type with accuracy within plus or minus one-half (1/2) inch.

Section 13. Construction. Foundations shall rest on natural solid ground if a satisfactory soil is available at reasonable depths. Proper soil bearing values shall be established in accordance with recognized standards. If solid ground is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement.

Section 14. Mechanical Requirements. (1) Steam and hot water systems.

(a) Boilers. If boilers are used, a minimum of two (2) must be provided; the combined capacity of the boilers, based upon the published Steel Boiler Institute or Institute of Boiler and Radiator Manufacturer's net rating, must be able to supply 150 percent of the normal requirements of all systems and equipment.

(b) The design and installation of boilers in personal care homes shall comply with 815 KAR 15:010 through 060.

(2) Temperature and ventilating systems.

(a) Temperature. A minimum temperature of seventy-two (72) degrees Fahrenheit shall be provided for in occupied areas in winter conditions. A maximum temperature of eighty-five (85) degrees Fahrenheit shall be provided for in occupied areas in summer conditions.

(b) Ventilation systems details. All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at or near the point of discharge from the building. The ventilation rates shown in Table 1, Section 16 of this regulation, shall not be considered as precluding the use of higher ventilation rates if they are required to meet design conditions.

1. Outdoor ventilation air-intakes, other than for individual room units, shall be located as far away as practicable but not less than twenty-five (25) feet from the exhausts from any ventilating system or combustion equipment. The bottom of outdoor intakes serving central air systems shall be located as high as possible but not less than eight (8) feet above the ground

level or, if installed through the roof, three (3) feet above roof level.

2. The ventilation systems shall be designed and balanced to provide the general pressure relationship to adjacent areas shown in Table 1, Section 16 of this regulation.

3. Room supply air inlets, recirculation, and exhaust air outlets shall be located not less than three (3) inches above the floor.

4. Corridors shall not be used to supply air to or exhaust air from any room, except that exhaust air from corridors may be used to ventilate rooms such as bathrooms, toilet rooms, or janitor's closets which open directly on corridors.

(3) Plumbing and other piping systems. Lavatories in resident rooms shall have the water supply spout mounted so that its discharge point is a minimum distance of five (5) inches above the rim of the fixture. Fixtures used in the dietary area, soiled workroom and clean workroom shall be trimmed with valves which can be operated without the use of hands. Where blade handles are used for this purpose, they shall be at a distance from the centerline of the sink to be operational.

(4) Water supply systems.

(a) System shall be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of fifteen (15) pounds per square inch during maximum demand periods.

(b) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(c) Hot, cold and chilled water piping and waste piping on which condensation may occur shall be insulated. Insulation of cold and chilled water lines shall include an exterior barrier.

(d) Backflow preventers (vacuum breakers) shall be installed on hose bibbs and on all fixtures to which hoses or tubing can be attached such as janitor's sinks and bedpan flushing attachments.

(e) Hot water distribution systems shall be arranged to provide hot water at each fixture at all times.

(f) Piping over food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage of, or condensation from necessary overhead piping systems.

(5) Hot water heaters and tanks.

(a) The hot water heating equipment shall have sufficient capacity to supply the water at the temperature and amounts indicated below:

	Use		
	Resident	Dishwasher	Laundry
Gal/hr/bed	6 1/2	4	4 1/2
Temp. F.	100-110	180*	140-180**

*Temperature may be reduced to 140 if chloritizer is used.

**If the temperature used is below 180 the home shall utilize detergents and other additives to insure that the linens be adequately cleaned.

(b) Storage tank(s) shall be provided and shall be fabricated of corrosion-resistant metal, or have noncorrosive lining.

(6) Plumbing approval. Prior to final approval of the plans and specifications by the licensure agency, the plumbing plans and specifications must be approved by the Division of Plumbing, Department of Housing, Buildings and Construction.

Section 15. Electrical Requirements. (1) General. Electrical requirements of the Kentucky Building Code shall apply where applicable.

(2) The wiring in each home shall be inspected by a certified electrical inspector and a certificate of approval shall be issued, to the facility, prior to occupancy; however, the wiring in existing buildings shall be approved by a certified electrical inspector only when the building has not been previously so approved for health care occupancy or where the state Fire Marshal finds that a hazardous condition exists.

(3) Switchboard and power panels. All breakers and switches shall be indexed.

(4) Lighting.

(a) All spaces occupied by people, machinery, and equipment within buildings, and the approaches thereto, and parking lots shall have electric lighting.

(b) Residents' bedrooms shall have general lighting. A reading light shall be provided for each resident when appropriate. Residents' reading lights and other fixed lights not switched at the door shall have switch controls convenient for use at the luminaire. Night lights shall be provided in each resident's room.

(c) Lighting levels for the facility shall comply with the requirements in Table 2, Section 16 of this regulation.

(5) Receptacles (convenience outlets).

(a) Bedroom. Each resident bedroom shall have duplex receptacles as follows: one (1) each side of the head of each bed (for parallel adjacent beds, only one (1) receptacle is required between beds); receptacles for luminaires, television and motorized beds, if used, and one (1) receptacle on another wall.

(b) Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart in all corridors and within twenty-five (25) feet of ends of corridors.

(6) Emergency electric service.

(a) General.

1. To provide electricity during an interruption of the normal electric supply that could affect the care or safety of the occupants, an emergency generating set shall be provided and connected to certain circuits for lighting and power for a continuous period up to four (4) hours.

2. When the home is supplied by at least two (2) dedicated and separate utility service feeders, an emergency generating set is not required.

(b) Emergency electrical connections. Emergency electric service shall be provided to circuits as follows:

1. Lighting.

a. Exitways and all necessary ways of approach thereto, including exit signs and exit direction signs, exterior of exits, exit doorways, stairways, and corridors;

b. Medication preparation areas;

c. Switch-gear location and boiler room;

d. Elevator (if required for emergency).

2. Equipment, essential to life safety and for protection of important or vital materials:

sewage or sump lift pump, if installed.

(c) Details. The emergency system shall be so controlled that after interruption of the normal electric power supply, the electric source is brought to full voltage and frequency and connected to all emergency lighting, all alarms, and equipment.

Section 16. Appendix: Table 1 - Pressure Relationships and Ventilation of Certain Personal Care Areas. Table 2 - Lighting Levels for Personal Care.

Table 1.
Pressure Relationships and Ventilation
of Certain Personal Care Areas.

Area Designation	Pressure Relationship to Adjacent Areas	All Supply Air From Outdoors	Minimum Air Changes of Outdoor Air per Hour
Resident room	0	—	1
Resident area corridor	0	—	1
Treatment room	0	Yes	1
Physical therapy and hydrotherapy, if applicable	N	—	1
Dining and recreation areas	0	—	1
Soiled workroom	N	—	1
Clean workroom	P	Yes	1
Toilet room	N	—	—
Bedpan room if applicable	N	—	—
Bathroom	N	—	—
Janitor's closet	N	—	—
Linen and trash chute room	N	—	—
Food preparation center	0	—	2
Dishwashing area	N	—	—
Dietary dry storage	0	—	—
Laundry, general	0	—	2
Soiled linen sorting and storage	N	—	2
Clean linen storage	P	—	2

P = Positive N = Negative 0 = Equal — = Optional

Table 1. Continued

Area Designation	Minimum Total Air Changes Per Hour	All Air Exhausted Directly to Outdoors
Resident room	4	—
Resident area corridor	4	—
Treatment room	4	Yes
Physical therapy and hydrotherapy if applicable	6	—
Dining and recreation areas	4	—
Soiled workroom	4	Yes
Clean workroom	4	—
Toilet room	10	Yes
Bedpan room if applicable	10	Yes
Bathroom	10	Yes
Janitor's closet	10	Yes
Linen and trash chute rooms	10	Yes
Food preparation center	10	Yes
Dishwashing area	10	Yes

Dietary dry storage	2	—
Laundry, general	10	Yes
Soiled linen sorting and storage	10	Yes
Clean linen storage	2	—

P = Positive N = Negative 0 = Equal — = Optional

Table 2.
Lighting Levels for Personal Care

Area	Foot-candles*
Administrative and lobby areas, day	50
Administrative and lobby areas, night	20
Corridors and interior ramps	20
Corridor night lighting	3
Dining area and kitchen	30
Doorways	10
Exit stairways and landings	5
Janitor's closet	15
Staff Lounge, general, day	50
Staff Lounge, general, night	20
Medicine Cabinet	100
Resident care unit (or room), general	10
Resident care room, reading	30
Recreation area (floor level)	50
Stairways other than exits	30
Toilet and bathing facilities	30
Utility room, general	20

*Minimum on task at anytime

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:
TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:046. Facility specifications; nursing homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105[(3)]

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105[(3)] mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides [for the] licensure requirements for [the] structural specifications for the alteration and maintenance of existing nursing home facilities.

Section 1. Definitions. (1) "Board" means the Commission for Health Economics Control in Kentucky [Health Facilities and Health Services Certificate of Need and Licensure Board].

[(2)] "Certificate of need" means an authorization by the board to proceed with any acquisition, initiation, construction or expansion pursuant to KRS Chapter 216B.]

[(2)] [(3)] "License" means an authorization issued by the board for the purpose of operating a nursing home facility.

[(3)] [(4)] "Licensure Agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

Section 2. Preparation and Approval of Plans and Specifications. (1) Before alterations are begun to existing buildings or any change in existing nursing home facilities, the licensee or applicant shall submit plans to the licensure agency for approval.

(2) All architectural, mechanical and electrical drawings shall bear either the seal of an architect registered in the Commonwealth of Kentucky or the seal of a professional engineer registered in the Commonwealth of Kentucky, or both.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) All such plans and specifications must be approved by the licensure agency prior to commencement of alteration of existing buildings.

(5) Plans and specifications in specific detail as required by the Kentucky Building Code shall be submitted together with architectural and/or engineering stamps as required by KRS Chapters 322 and 323, to the Department of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. All such plans and specifications must be approved by the Department of Housing, Buildings and Construction and appropriate local building permits shall be obtained prior to commencement of any alteration.

Section 3. Submission of Plans and Specifications. (1) First stage, schematic plans.

(a) Single line drawings of each floor shall show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room shall be noted. Drawings shall include typical patient room layouts (scaled one-fourth (1/4) inch to one (1) foot) with dimensions noted. The proposed roads and walks, service and entrance courts, parking and orientation shall be shown in a plot plan.

(b) If the project is an addition or is otherwise related to existing buildings on the site, the plans shall show the facilities and general arrangements of those buildings.

(2) Second stage, preliminary plans. Preliminary sketch plans shall include the following:

(a) Architectural: plans of basement and floors.

(b) Outline specifications.

1. General description of the alteration, including interior finishes, types and locations of acoustical material, and special floor covering;

2. Description of the air-conditioning, heating, and ventilation systems and their controls, duct and piping systems; and dietary, laundry, sterilizing, and other special equipment;

3. General description of electrical service including voltage, number of feeders, and whether feeders are overhead or underground.

(3) Third stage. Contract documents.

(a) Working drawings. Working drawings shall be complete and adequate for bid, contract, and construction purposes. Drawings shall be prepared for each of the following branches of the work: architectural, structural, mechanical, and electrical. They shall include the following:

1. Architectural drawings.

a. Approach plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new building structures, roadways, walks, and parking areas;

b. Plan of each basement, floor and roof;

c. Elevations of each facade;

d. Sections through building;

e. Required scale and full-size details;

f. Schedule of doors, windows, and room finishes;

g. Layout of typical and special rooms indicating all fixed equipment and major items of movable equipment. Equipment not included in contract shall be so indicated;

h. Conveying systems. Details of construction,

machine and control space necessary, size and type of equipment, and utility requirements for the following: dumbwaiters - electric, hand, hydraulic; elevators - freight, passenger, patient; loading dock devices; pneumatic tube systems.

2. Structural drawings.

a. Plans for foundations, floors, roofs, and all intermediate levels with sizes, sections, and the relative location of the various structural members;

b. Dimensions of special openings;

c. Details of all special connections, assemblies, and expansion joints.

3. Mechanical drawings.

a. Heating, steam piping, and air-conditioning systems. Radiators and steam heated equipment, such as sterilizers, warmers, and steam tables; heating and steam mains and branches with pipe sizes; sizes, types, and capacities of boilers, furnaces, hot water heater with stokers; oil burners, or gas burners; pumps, tanks, boiler breeching, and piping and boiler room accessories; air-conditioning systems with required equipment, water and refrigerant piping, and ducts; supply and exhaust ventilation systems with heating/cooling connections and piping; air quantities for all room supply and exhaust ventilating duct openings.

b. Plumbing, drainage, and standpipe systems. Size and elevation of: street sewer, house sewer, house drains, street water main, and water service into the building; location and size of soil, waste, and water service with connections to house drains, clean-outs, fixtures, and equipment; size and location of hot, cold and circulating branches, and risers from the service entrance, and tanks; riser diagram of all plumbing stacks with vents, water risers, and fixture connections; gas, oxygen, and vacuum systems; standpipe and sprinkler systems where required; all fixtures and equipment that require water and drain connections.

4. Electrical drawings.

a. Electrical service entrance with switches and feeders to the public service feeders, characteristics of the light and power current, transformers and their connections if located in the building;

b. Location of main switchboard, power panels, light panels, and equipment. Diagram of feeders and conduits with schedule of feeder breakers or switches;

c. Light outlets, receptacles, switches, power outlets, and circuits;

d. Telephone layout showing service entrance, telephone switchboard, strip boxes, telephone outlets, and branch conduits;

e. Nurses' call systems with outlets for beds, duty stations, door signal light, annunciators, and wiring diagrams;

f. Emergency electrical system with outlets, transfer switch, sources of supply, feeders, and circuits;

g. All other electrically operated systems and equipment.

(b) Specifications. Specifications shall supplement the drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment and shall include:

1. Cover or title sheet;
2. Index;

3. Sections describing materials and workmanship in detail for each class of work;

4. Access to the work. Representatives of the appropriate state agencies shall have access at all reasonable times to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

Section 4. Compliance with Building Codes, Ordinances and Regulations. (1) This section be administered independently from other sections of this regulation.

(2) General. Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(3) The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended;

(b) Requirements for plumbing pursuant to 815 KAR 20:010 to 20:190, as amended;

(c) Requirements for air contaminants for incinerators pursuant to 401 KAR 59:020 and 401 KAR 61:010;

(d) Requirements for elevators pursuant to 815 KAR 4:010; and

(e) Requirements for making buildings and facilities accessible to and usable by the physically handicapped, pursuant to KRS 198B.260 and regulations promulgated thereunder.

(4) Prior to occupancy, facility must have final approval from appropriate agencies.

(5) All facilities shall be currently approved by the Fire Marshal's Office in accordance with the Life Safety Code before relicensure is granted by the licensure agency.

Section 5. Facility Requirements and Special Conditions. (1) Independent facilities with a capacity of fifty (50) beds or less present special problems. The sizes of the various departments will depend upon the requirements of the facilities. Some functions allotted separate spaces or rooms in these general standards may be combined provided that the resulting plan will not compromise the standards of safety and of medical and nursing practices and the social needs of patients. In other respects, the general standards set forth herein, including the area requirements, shall apply.

(2) Facilities shall be available to the public, staff, and patients who may be physically handicapped with special attention given to ramps; drinking fountain height, mirrors, etc.

(3) The number of beds in a nursing unit shall not exceed sixty (60) unless additional services are provided, as deemed necessary by the state agency. At least two (2) rooms per nursing unit shall be designed for single person occupancy (one (1) bed) and shall have private toilet rooms with bath. At least sixty (60) percent of the beds shall be located in rooms designed for one (1) or two (2) beds.

Section 6. Nursing Unit. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) Maximum room capacity: four (4) patients;

(b) Patient rooms shall be designed to permit no more than two (2) beds side by side parallel

to the window wall. Not less than a four (4) foot space shall be provided between beds, and at least a three (3) foot space between the side of a bed and the nearest wall, fixed cabinet, or heating/cooling element. A minimum of four (4) feet is required between foot of bed and opposite wall, or foot of opposite bed in multibed rooms;

(c) Window. All patient rooms must have windows opening to the outside. Sill shall not be higher than three (3) feet above the floor and shall be above grade. Window area to be at least eight (8) percent of patient room floor area;

(d) Lavatory. In single and two (2) bed rooms with private toilet room, the lavatory may be located in the toilet room. Where two (2) patient rooms share a common toilet, a lavatory shall be provided in each patient room;

(e) Wardrobe or closet for each patient. Minimum clear dimensions: one (1) foot deep by one (1) foot and eight (8) inches wide with full length hanging space clothes rod and shelf;

(f) Cubicle curtains, or equivalent built-in devices for complete privacy for each patient in each multibed room and in tub, shower and toilet rooms;

(g) No patient room shall be located more than 120 feet from the nurses' station, the clean workroom, and the soiled workroom. No room shall be used as a patient room where the access is through another patient's room.

(2) Patient toilet rooms.

(a) A toilet room shall be directly accessible from each patient room and from each central bathing area without going through the general corridor. One (1) toilet room may serve two (2) patient rooms but not more than four (4) beds. The minimum dimensions of any room containing only a toilet shall be three (3) feet by five (5) feet;

(b) Toilets must be easily usable by wheelchair patients. Grab bars shall be provided at all toilets;

(c) At least one (1) toilet for each sex shall be provided for training purposes and access by wheelchairs. It shall be accessible from the nursing corridor, may be part of the bathing area and shall have a minimum size, of five (5) feet by six (6) feet;

(d) Doors to toilet rooms shall have a minimum width of two (2) feet and ten (10) inches to admit a wheelchair.

(3) Service areas in each nursing unit. The size of each service area will depend on the number and types of beds within the unit and shall include:

(a) Nurses' station for nurses' charting, doctors' charting, communications, and storage for supplies and nurses' personal effects;

(b) Staff lounge area. The area shall have personal storage space and a toilet room for staff;

(c) Visitors toilet room. The facility shall provide a toilet room for visitors. The staff toilet room may serve as the visitors toilet room if marked and accessible;

(d) Clean workroom for storage and assembly of supplies for nursing procedures containing work counter, sink, and small sterilizer;

(e) Soiled workroom containing clinical sink, work counter with two (2) compartment sink, waste receptacles, and soiled linen receptacles;

(f) Medicine room adjacent to nurses' station with sink, refrigerator, locked storage, and

facilities for preparation and dispensing of medication. (May be designated area within clean workroom if a self-contained cabinet is provided.) The controlled substances locker must be under double lock and wired to warning light at nurses' station;

(g) Clean linen storage with enclosed storage space (may be a designated area within the clean workroom);

(h) Nourishment station with storage space, sink, hot plate and refrigerator for serving between-meal nourishments (may serve more than one (1) nursing unit on the same floor);

(i) Equipment storage room for storage of IV stands, inhalators, air mattresses, walkers, and similar bulky equipment;

(j) Patient baths. One (1) shower stall or one (1) bathtub required for each fifteen (15) beds not individually served. There shall be at least one (1) free standing bathtub in each bathroom. Grab bars or patient lift with a safety device shall be provided at all bathing fixtures. Each bathtub or shower enclosure in central bathing facilities shall provide space for the private use of bathing fixture, for dressing, and for a wheelchair and attendant. Showers in central bathing facilities shall not be less than four (4) feet square, without curbs, and designed to permit use from a wheelchair. Soap dishes in showers and bathrooms shall be recessed;

(k) Stretcher and wheelchair parking area or alcove;

(l) Janitor's closet for storage of housekeeping supplies and equipment. Floor receptor or service sink;

(m) Bedpan washing facilities. Bedpan washing attachments are recommended for each patient room toilet. It will be acceptable, however, to have separate bedpan washing closets in each nursing unit, provided that they are so located that bedpans need not be carried through lobbies, dining and recreation areas, or day rooms.

(4) Special purposes room(s) for consultation, examination and treatment, and therapeutic and nursing procedures. (May serve more than one (1) nursing unit on the same floor.) These rooms shall include a lavatory, storage space, and space for a treatment table and have a minimum floor area of nine (9) feet by eleven (11) feet.

(5) Patients' dining, TV viewing and recreation areas.

(a) The total areas set aside for these purposes shall be not less than thirty (30) square feet per bed for the first fifty (50) beds and twenty (20) square feet per bed for all beds in excess of fifty (50). Additional space shall be provided for outpatients if they participate in a day care program.

(b) Storage shall be provided for recreational equipment and supplies (e.g., wall cabinet and closets).

Section 7. Therapy Units. (1) If the facility has a physical therapy unit the following shall be provided (depending on the program):

(a) Office (may also serve for occupational therapy office);

(b) Exercise and treatment areas with sink or lavatory and cubicle curtains around treatment areas;

(c) Hydrotherapy areas with cubicle curtains around treatment areas;

(d) Storage for supplies and equipment; and

(e) Toilet rooms located for convenient access

by physical therapy patients (may also serve occupational therapy patients).

(2) If the facility has an occupational therapy unit it shall include:

(a) Office space (may be shared with physical therapy office);

(b) Therapy area with sink or lavatory;

(c) Storage for supplies and equipment;

(d) Toilet room (Not required if other toilet facilities are convenient).

(3) Personal care room with space for shampoo sink and barber chair (not required in facility of less than twenty-five (25) beds).

Section 8. Dietary Department. If a commercial service will be used or meals will be provided by an adjacent hospital, dietary areas and equipment shall be designed to accommodate the requirements for sanitary storage, processing, and handling, otherwise the following shall be provided:

(1) Food preparation center with a lavatory but no mirror;

(2) Food serving facilities to accommodate patients and staff;

(3) Dishwashing room with commercial-type dishwashing equipment and a lavatory;

(4) Pot-washing facilities;

(5) Refrigerated storage to accommodate three (3) day supply;

(6) Dry storage to accommodate three (3) day supply;

(7) Cart cleaning facilities;

(8) Cart storage area;

(9) Waste disposal facilities;

(10) Can-washing facilities;

(11) Staff dining facilities;

(12) Patient dining facilities;

(13) Dietician's office (may be omitted in facilities with less than 100 beds if desk space is provided in kitchen);

(14) Janitor's closet with storage for housekeeping supplies and equipment, floor receptor or service sink; and

(15) Toilet room which is conveniently accessible to dietary staff with a two (2) door separation from food preparation area or dining area.

Section 9. Administration Department. The facility shall have adequate administrative, public, and staff facilities (e.g., offices, lobby, toilet facilities) to accommodate the needs of the public, patients, and staff without interfering with the provision of medical care services.

Section 10. Laundry. The following shall be included:

(1) Soiled linen room;

(2) Clean linen and mending room;

(3) Linen cart storage;

(4) Lavatories accessible from soiled, clean, and processing rooms;

(5) Laundry processing room with commercial type equipment sufficient to take care of seven (7) days' needs within the workweek;

(6) Janitor's closet with storage for housekeeping supplies and equipment, floor receptor or service sink; and

(7) Storage for laundry supplies. (Subsections (5), (6), and (7) of this section need not be provided if laundry is processed outside the

facility.)

Section 11. Storage and Service Areas. (1) Central storage room(s) with at least ten (10) square feet per bed for first fifty (50) beds; and five (5) square feet per bed for all beds over fifty (50), to be concentrated in one (1) area.

(2) Locker rooms with toilets, and lavatories for staff and volunteers and rest space for females.

(3) Engineering service and equipment areas. The following shall be provided:

(a) Boiler room;

(b) Engineers' office (may be omitted in facilities of less than 100 beds);

(c) Mechanical and electrical equipment room(s) (can be combined with boiler room);

(d) Maintenance shop(s). At least one (1) room shall be provided (can be combined with boiler room in nursing homes of less than fifty (50) beds);

(e) Storage room for building maintenance supplies and paint storage;

(f) Storage room for housekeeping equipment (need not be provided if space is available in janitor's closets or elsewhere);

(g) Toilet and shower rooms (may be omitted in nursing homes of less than 100 beds);

(h) Incinerator space. If the facility has an incinerator, it shall be in a separate room, in a designated area within the boiler room, or outdoors;

(i) Refuse room for holding trash prior to disposal located convenient to service entrance; and

(j) Yard equipment storage room for yard maintenance equipment and supplies.

Section 12. Details and Finishes. The facility shall be designed for maximum safety for the occupants to minimize the incidence of accidents. Hazards such as sharp corners shall be avoided. All details and finishes shall meet the following requirements:

(1) Details.

(a) Doors to patient toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of two (2) feet and ten (10) inches.

(b) Such items as drinking fountains, telephone booths and vending machines shall be located so that they do not project into the required width of exit corridors.

(c) Handrails shall be provided on both sides of corridors used by patients in facilities with a clear distance of one and one-half (1 1/2) inches between handrail and wall.

(d) All doors to patient-room toilet rooms and patient-room bathrooms shall swing outward or shall be equipped with hardware which will permit access in any emergency.

(e) All doors opening onto corridors shall be swing-type except elevator doors. Alcoves and similar spaces which generally do not require doors are excluded from this requirement.

(f) Thresholds and expansion joint covers, if used, shall be flush with the floor.

(g) Grab bars and accessories in patient toilet, shower, and bathrooms shall have sufficient strength and anchorage to sustain a load of 250 pounds for five (5) minutes.

(h) Lavatories intended for use by patients shall be installed to permit wheelchairs to

slide under.

(i) The location and arrangement of lavatories and sinks with blade handles intended for hand-washing purposes shall provide sixteen (16) inches clearance each side of center line of fixture.

(j) Mirrors shall be arranged for convenient use by patients in wheelchairs as well as by patients in standing position.

(k) Towel dispensers shall be provided at all lavatories and sinks used for hand-washing.

(l) If linen and refuse chutes are used, they shall be designed as follows:

1. Minimum diameter of gravity-type chutes shall be two (2) feet;

2. Chutes shall extend at least four (4) feet above the roof and shall be covered by a metal skylight glazed with thin plain glass or plastic.

(m) Ceiling heights.

1. The boiler room ceiling shall not be less than two (2) feet six (6) inches above the main boiler header and connecting piping with nine (9) feet headroom under piping for maintenance and access;

2. Corridors, storage rooms, patients' toilet room, and other minor rooms shall not be less than seven (7) feet and six (6) inches;

3. Ceilings in all other rooms shall not be less than eight (8) feet.

(n) Boiler room, food preparation centers, and laundries shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature of eighty-five (85) degrees Fahrenheit.

(o) Noise reduction criteria. Provision shall be made to minimize sound transmission in:

1. Corridors in patient areas;

2. Nurses' stations;

3. Utility rooms;

4. Floor pantries; and

5. Lobbies and recreation areas.

(p) Special attention shall be given to sound transmission from boiler rooms, mechanical rooms, and kitchen, to patient bedroom areas.

(2) Finishes.

(a) Floors generally shall be easily cleanable and shall have the wear resistance appropriate for the location involved. Floors in kitchen and related spaces shall be waterproof and grease-proof. In all areas where floors are subject to wetting, they shall have a nonslip finish. Carpeting is not permitted in the following areas: kitchen, dishwashing room, soiled utility room, janitor's closet, soiled linen rooms, storage room, bathrooms, public toilet rooms, patient toilet rooms, hydrotherapy rooms, treatment rooms, and any other room where the floor is subject to repeated wetting or soiling.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an unbroken surface.

(c) Walls generally shall be washable, and in the immediate area of plumbing fixtures, the finish shall be moisture-proof. Wall bases in dietary areas shall be free of spaces that can harbor insects.

(d) Ceilings generally shall be washable or easily cleanable. This requirement does not apply to boiler rooms, mechanical and building equipment rooms, shops and similar spaces.

Section 13. Elevators. All facilities where either patient beds or inpatient facilities such

as diagnostic, recreation, patient dining or therapy rooms are located on other than the first floor, shall have electric or electrohydraulic elevators as follows:

(1) Number of elevators. All facilities with patient beds or residential facilities located on any floor other than the first floor shall have at least one (1) hospital-type elevator and such additional elevators as determined by the licensure agency from a study of the facility plan and the estimated vertical transportation requirements.

(2) Cars and platforms. Elevator cars and platforms shall be constructed of noncombustible material, except that fire-retardant-treated material may be used if all exterior surfaces of the cars are covered with metal. Cars of hospital-type elevators shall have inside dimensions that will accommodate a patient's bed and attendants and shall be at least five (5) feet wide by seven (7) feet and six (6) inches deep. Car doors shall have a clear opening of not less than three (3) feet and eight (8) inches. Cars of all other required elevators shall have a clear opening of not less than three (3) feet.

(3) Leveling. Elevators shall have automatic leveling of the two (2) way automatic maintaining type with accuracy within plus or minus one-half (1/2) inch.

Section 14. Foundations. Foundations shall rest on natural solid ground if a satisfactory soil is available at reasonable depths. Proper soil bearing values shall be established in accordance with recognized standards. If solid ground is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement.

Section 15. Mechanical Requirements. (1) General. Prior to completion of the contract and final acceptance of the facility, the architect and/or engineer shall obtain certification from the contractor that all mechanical systems have been tested and that the installation and performance of these systems conform to the requirements of the plans and specifications.

(2) Steam and hot water systems.

(a) Boilers. If boilers are used, a minimum of two (2) must be provided. The combined capacity of the boilers, based upon the published Steel Boiler Institute of Boiler and Radiator Manufacture's net rating, must be able to supply 150 percent of the normal requirements of all systems and equipment.

(b) Covering. Boiler and smoke breeching, all steam supply piping and high pressure steam return piping, and hot water space heating supply and return piping shall be insulated.

(3) Temperatures and ventilating systems.

(a) Temperatures. A minimum temperature of seventy-two (72) degrees Fahrenheit shall be provided for in all occupied areas in winter conditions. A maximum temperature of eighty-five (85) degrees Fahrenheit shall be provided for in occupied areas in summer conditions.

(b) Ventilation system details. All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown in Section 17, Table 1 of this regulation, shall be considered as

minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates if they are required to meet design conditions.

1. Outdoor ventilation air-intakes, other than for individual room units, shall be located as far away as practicable but not less than twenty-five (25) feet from the exhausts from any ventilating system or combustion equipment. The bottom of outdoor intakes serving central air systems shall be located as high as possible but not less than eight (8) feet above the ground level or, if installed through the roof, three (3) feet above roof level.

2. The ventilation systems shall be designed and balanced to provide the general pressure relationship to adjacent areas shown in Section 17, Table 1 of this regulation.

3. Room supply air inlets, recirculation, and exhaust air outlets installed in nonsensitive areas shall be located not less than three (3) inches above the floor.

4. Corridors shall not be used to supply air to or exhaust air from any room, except that exhaust air from corridors may be used to ventilate bathrooms, toilet rooms, or janitor's closets opening directly into corridors.

5. Filters. Central systems shall be provided with filters rated at eighty (80) percent efficiency based upon the National Bureau of Standards Dust Spot Method with Atmospheric Dust.

6. A manometer shall be installed across each filter bed serving central air systems.

7. The air from dining areas may be used to ventilate the food preparation areas only after it has been passed through a filter with eighty (80) percent efficiency.

8. Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment and required temperatures in the facility.

(4) Plumbing and other piping systems.

(a) Lavatories and sinks required in patient care areas shall have the water supply spout mounted so that its discharge point is a minimum distance of five (5) inches above the rim of the fixture. All fixtures used by medical and nursing staff, and all lavatories used by patients and food handlers shall be trimmed with valves which can be operated without the use of hands. Where blade handles are used for this purpose, they shall be at a distance from the center line of the sink to be operational.

(b) Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(5) Water supply system.

(a) Systems shall be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of fifteen (15) pounds per square inch during maximum demand periods.

(b) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(c) Hot, cold and chilled water piping and waste piping on which condensation may occur shall be insulated. Insulation of cold and chilled water lines shall include an exterior vapor barrier.

(d) Backflow preventers (vacuum breakers) shall be installed on hose bibbs and on all fixtures to which hoses or tubing can be

attached such as janitor's sinks and bedpan flushing attachments.

(e) Flush valves installed on plumbing fixtures shall be of a quiet operating type, equipped with silencers.

(f) Bedpan flushing devices shall be provided.

(g) Hot water distribution systems shall be arranged to provide hot water at each fixture at all times.

(h) Plumbing fixtures which require hot water and which are intended for patient use shall be supplied with water which is controlled to provide a maximum water temperature of 110 degrees Fahrenheit at the fixture.

(i) Piping over food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage of, or condensation from, necessary overhead piping systems.

(6) Hot water heaters and tanks.

(a) The hot water heating equipment shall have sufficient capacity to supply the water at the temperature and amounts indicated below:

	Use		
	Clinical	Dietary	Laundry
Gal/hr/bed	6 1/2	4	4 1/2
Temp. F.	100-110	180*	140-180**

*Temperature may be reduced to 140 if chloritizer is used.

**If the temperature used is below 180 the facility shall utilize detergents and other additives to insure that the linens will be adequately cleaned.

(b) Storage tank(s) shall be provided and shall be fabricated of corrosion-resistant metal, or have noncorrosive lining.

(7) Plumbing approval. Prior to final approval of the plans and specifications by the licensure agency, the plumbing plans and specifications must be approved by the Division of Plumbing, Department of Housing, Buildings and Construction.

Section 16. Electrical Requirements. (1) Electrical requirements of the Kentucky Building Code shall apply where applicable.

(2) The wiring in each facility shall be inspected by a certified electrical inspector and a certificate of approval shall be issued to the facility, prior to occupancy. However, the wiring in existing buildings shall be approved by a certified electrical inspector only when the building has not been previously so approved for health care occupancy or where the state Fire Marshal finds that a hazardous condition exists.

(3) Switchboard and power panels. All breakers and switches shall be indexed.

(4) Lighting.

(a) All spaces occupied by people, machinery, and equipment within buildings, and the approaches thereto, and parking lots shall have electric lighting.

(b) Patients' bedrooms shall have general lighting and night lighting. A reading light shall be provided for each patient. A fixed receptacle type night light mounted approximately sixteen (16) inches above the floor, shall be provided in each patient room. Patients' reading lights and other fixed lights

not switched at the door shall have switch controls convenient for use at the luminaire. All switches for control of light in patient areas shall be of the quiet operating type.

(c) Lighting levels for the facility shall comply with the requirements of Section 17, Table 2 of this regulation.

(5) Receptacles. Convenience outlets.

(a) Bedroom. Each patient bedroom shall have duplex receptacles on each side of the head of each bed (for parallel adjacent beds, only one (1) receptacle is required between the beds), receptacles for luminaires, television and motorized beds, if used, and one (1) receptacle on another wall.

(b) Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart in all corridors and within twenty-five (25) feet of ends of corridors.

(6) Nurses' calling system. A nurses' calling station shall be installed at each patient bed and in each patient toilet, bath, and shower room. The nurses' call in toilet, bath, or shower rooms shall be an emergency call. All calls shall register at the nurses' station and shall actuate a visible signal in the corridor at the patients' door, in the clean workroom, soiled workroom, and nourishment station of the nursing unit. Nurses' call systems which provide two (2) way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operative.

(7) Emergency electric service.

(a) General. To provide electricity during an interruption of the normal electric supply that could affect the nursing care, treatment, or safety of the occupants, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power.

(b) Sources. The source of this emergency electric service shall be as follows:

1. An emergency generating set, when the normal service is supplied by one (1) or more central station transmission lines;

2. An emergency generating set or a central station transmission line, when the normal electric supply is generated on the premises.

(c) Emergency generating set.

1. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electric system. The emergency generator set shall be sufficient kilowatt capacity to supply all electrical connections itemized in paragraph (d) of this subsection.

2. In facilities constructed prior to the effective date of this regulation which are supplied by at least two (2) dedicated and separate utility service feeders, an emergency generating set is not required.

(d) Emergency electrical connections. Emergency electric service shall be provided to circuits as follows:

1. Lighting.

a. Exitways and all necessary ways of approach thereto, including exit signs and exit direction signs, exterior of exits, exit doorways, stairways, and corridors;

b. Dining and recreation rooms;

c. Nursing station and medication preparation area;

d. Generator set location, switch-gear

location, and boiler room;

e. Elevator; and

f. Night lights in patient rooms.

2. Equipment. Essential to life safety and for protection of important or vital materials:

a. Nurses' calling system;

b. Alarm system including fire alarm actuated at manual stations, water flow alarm devices of sprinkler system if electrically operated, fire detecting and smoke detecting systems, paging or speaker systems if intended for issuing instructions during emergency conditions, and alarms required for nonflammable medical gas systems, if installed;

c. Fire pump, if installed;

d. Sewerage or sump lift pump, if installed;

e. At least one (1) duplex receptacle in each patient room;

f. One (1) elevator, where elevators are used for vertical transportation of patients. Provide manual switch-over to operate other elevators;

g. Equipment such as burners and pumps necessary for operation of one (1) or more boilers and their necessary auxiliaries and controls, required for heating and sterilization; and

h. Equipment necessary for maintaining telephone service.

3. Heating. Where electricity is the only source of power normally used for space heating, the emergency service shall provide for heating of patient rooms. Emergency heating of patient rooms will not be required in areas where the facility is supplied by at least two (2) utility service feeders, each supplied by separate generating sources or a network distribution system fed by two (2) or more generators, with the facility feeders so routed, connected, and protected that a fault any place between the generators and the facility will not likely cause an interruption of more than one (1) of the facility service feeders.

(e) Details. The emergency system shall be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency and connected within ten (10) seconds through one (1) or more primary automatic transfer switches to all emergency lighting, all alarms, nurses' call, equipment necessary for maintaining telephone service, and receptacles in patient corridors. All other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification. Storage battery powered lights shall not be used as a substitute for the requirement of a generator. Where fuel is normally stored on the site, the storage capacity shall be sufficient for twenty-four (24) hour operation of required emergency electric services. Where fuel is normally piped underground to the site from a utility distribution system, storage facilities on the site will not be required.

Section 17. Table 1 - Pressure Relationships and Ventilation of Certain Nursing Home Areas. Table 2 - Lighting Levels for Nursing Homes.

Table 1. Pressure Relationships and Ventilation of Certain Nursing Home Areas

Area Designation	Pressure Relationship to Adjacent Areas	All Supply Air From Outdoors	Minimum Air Changes of Outdoor Air per Hour
Patient room	0	—	1
Patient room corridor	0	—	2
Treatment room	0	Yes	2
Physical and hydrotherapy; if applicable	N	—	2
Dining and recreation areas	0	—	2
Soiled workroom	N	—	2
Clean workroom	P	Yes	2
Toilet room	N	—	—
Bedpan room; if applicable	N	—	—
Bathroom	N	—	—
Janitor's closet	N	—	—
Linen and trash chute rooms	N	—	—
Food preparation center	0	Yes	2
Dishwashing area	N	—	—
Dietary dry storage	0	—	—
Laundry, general	0	Yes	2
Soiled linen sorting and storage	N	—	—
Clean linen storage	P	—	2

P = Positive N = Negative 0 = Equal — = Optional

Table 1. Continued

Area Designation	Minimum Total Air Changes Per Hour	All Air Exhausted Directly to Outdoors
Patient room	4	—
Patient area corridor	4	—
Treatment room	6	Yes
Physical therapy and hydrotherapy; if applicable	6	—
Dining and recreation areas	4	—
Soiled workroom	4	Yes
Clean workroom	4	—
Toilet room	10	Yes
Bedpan room; if applicable	10	Yes
Bathroom	10	Yes
Janitor's closet	10	Yes
Linen and trash chute room	10	Yes
Food preparation center	10	Yes
Dishwashing area	10	Yes
Dietary dry storage	2	—
Laundry, general	10	Yes
Soiled linen sorting and storage	10	Yes
Clean linen storage	2	—

Table 2. Lighting Levels for Nursing Homes Facilities

Area	Foot-candles*
Administrative and lobby areas, day	50
Administrative and lobby areas, night	20
Barber and beautician areas; if applicable	50

Corridors and interior ramps	20
Corridor night lighting	3
Dining area and kitchen	30
Doorways	10
Exit stairways and landings	5
Janitor's closet	15
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Patient care unit (or room), general	10
Patient care room, reading	30
Recreation area (floor level)	50
Stairways other than exits	30
Toilet and bathing facilities	30
Utility room, general	20
Utility room, work counter	50

*Minimum on task at anytime.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in

conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

**CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)**

902 KAR 20:054. Health maintenance organizations; operations and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides [for the] licensure requirements for the operations of [health maintenance organizations] and [the] services [to be] provided by health maintenance organizations.

[Section 1. Scope of Operation and Services. A health maintenance organization provides, directly or through arrangements with others, health care services to individuals voluntarily enrolled with such an organization on a per capita or a predetermined, fixed prepayment rate. These services shall include outpatient services including physician services and primary health care, inpatient services, diagnostic laboratory and radiology services, health education, and emergency medical services.]

Section 1. [2.] Definitions. (1) "Board" means the Commission for Health Economics Control in Kentucky [Health Facilities and Health Services Certificate of Need and Licensure Board].

(2) "Commissioner" means the Commissioner of the Department of Insurance.

(3) "Enrollee" means a person who is enrolled in a health maintenance organization.

(4) "Health care services" means any services included in the furnishing to any individual of medical, optometric, or dental care, or hospitalization or incident to the furnishing of such care or hospitalization; as well as the furnishing to any person of any and all other services and goods for the preventing, alleviating, curing, or healing of human illness, physical disability or injury.

(5) "Provider" means a licensed individual physician or group of physicians, licensed health facilities or services, and other licensed health professionals who have entered into an agreement with a health maintenance organization for the purpose of providing health services to enrollees.

Section 2. Scope of Operation and Services. A health maintenance organization provides, directly or through arrangements with others, health care services to individuals voluntarily enrolled with such an organization on a per capita or a predetermined, fixed prepayment rate. These services shall include outpatient services including physician services, inpatient services, diagnostic laboratory and radiology services, health education, and emergency medical services.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for compliance with federal, state and local laws and regulations pertaining to the operation of health maintenance organizations.

(b) All services covered by the benefit plans of the health maintenance organizations shall be provided in accordance with applicable laws and regulations relating thereto. When the health maintenance organization provides health services directly through its own health facilities or clinics, such facilities or clinics shall comply with applicable requirements of the Certificate of Need and Licensure Law. Any service which the health maintenance organization includes in the covered benefits plan shall be provided by duly licensed institutions, services, or practitioners where such licensure is required by law.

(2) Administrator. The health maintenance organization shall have an administrator who shall be responsible for the operation of the health maintenance organization and shall delegate such responsibility in his or her absence.

(3) Certificate of authority. The health maintenance organization shall have evidence that a certificate of authority has been issued and that the coverage of their benefits plan and rate schedules have received approval from the commissioner prior to licensing and relicensing of the organization by the board. The board may revoke the license or take other appropriate action if a health maintenance organization has its certificate of authority revoked or suspended by the commissioner.

(4) Administrative policies and procedures. The health maintenance organization shall have written policies to include:

(a) A current description of its operational and organizational structure.

(b) Procedures for hearing and resolving grievances between the organization (including the staff of the health maintenance organization and providers) and the enrollees of the organization. Such procedures shall assure that grievances and complaints are kept in a separate file and transmitted in a timely manner to appropriate decision making levels within the organization which has authority to take corrective action; and

(c) A written description provided to enrollees of services covered in the benefits plan of the health maintenance organization which also indicates how, where, and from whom services may be obtained. This description shall include instructions and procedures to enrollees on obtaining medically necessary emergency services other than through health maintenance organization providers (e.g., physicians or services outside the area served by the health maintenance organization) when the enrollee's

health would be jeopardized before services could be obtained through such providers.

(d) Written policies and procedures to carry out utilization studies with reference to the quality assurances of such services.

(5) Enrollee policies. The health maintenance organization shall have written policies regarding the rights and responsibilities of enrollees to assure that each enrollee:

(a) Is fully informed of these rights and of all rules governing enrollee conduct and responsibilities;

(b) Is fully informed of services made available by the health maintenance organization and of the payments applicable for basic and supplemental services;

(c) Is encouraged and assisted to understand and exercise his enrollee rights and to this end may voice grievances and recommend changes in policies and services;

(d) Is assured confidential treatment of his records and disclosures, and is afforded the opportunity to approve or refuse their release to any individual not involved in his care except as required by law or third party payment contract; and

(e) Is treated with consideration, respect, and with full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs.

(6) Enrollee records. The health maintenance organization shall maintain a medical record of all services provided to enrollees including diagnosis, treatment and recommended follow-up.

(7) Medical records. When the health maintenance organization provides services directly, medical records shall be maintained as required by the applicable licensure regulation (e.g., primary care, ambulatory care, etc.).

Section 4. Provisions of Service. The health maintenance organization shall provide services directly or through contract with appropriately licensed providers.

(1) A health maintenance organization shall provide as a minimum the following basic services in the covered benefits plan:

(a) Outpatient services including physician services;

(b) Inpatient services;

(c) Diagnostic laboratory and radiology services;

(d) Health education and education in the appropriate use of health services and in the contribution each person can make to the maintenance of their own health; and

(e) Emergency medical services.

(2) The health maintenance organization shall have procedures through which enrollees can obtain medically necessary emergency services for which its members have contracted through physicians or services that do not have contracts with the health maintenance organization (e.g., physicians or services outside the geographic area served by the health maintenance organization) when the enrollees condition would be jeopardized before he could obtain such services through a health maintenance organization provider.

(3) Within the area served by the health maintenance organization basic health care services for which the enrollees have contracted shall:

(a) Be available and accessible to each of the health maintenance organization's enrollees

promptly as appropriate with respect to its geographic location, hours of operation, and provisions for after-hours services (medically necessary emergency services must be available and accessible twenty-four (24) hours a day, seven (7) days a week).

(b) Be provided in a manner which assures continuity.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human

Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:056. Facility specifications; intermediate care.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides [for the] licensure requirements for [the] facility specifications for the construction, alteration and maintenance of intermediate care facilities.

Section 1. Definitions. (1) "Board" means the Commission for Health Economics Control in Kentucky [Health Facilities and Health Services Certificate of Need and Licensure Board].

[(2)] "Certificate of need" means an authorization by the Board to proceed with any acquisition, initiation, construction or expansion pursuant to KRS Chapter 216B.]

[(2)] [(3)] "License" means an authorization issued by the Board for the purpose of operating an intermediate care facility.

[(3)] [(4)] "Licensure agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

Section 2. Preparation and Approval of Plans and Specifications. After receiving certificate of need approval from the board, the following procedures shall be followed:

(1) Before construction is begun for the erection of new buildings or alterations to existing buildings or any change in facilities for an intermediate care facility, the licensee or applicant shall submit plans in the detail specified in Section 3 of this regulation to the licensure agency for approval.

(2) All architectural, mechanical and electrical drawings shall bear either the seal of an architect registered in the Commonwealth of Kentucky or the seal of a professional engineer registered in the Commonwealth of Kentucky, or both.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) All such plans and specifications must be approved by the licensure agency prior to commencement of construction of new buildings or alterations of existing buildings.

(5) Plans and specifications in specific detail as required by the Kentucky Building Code shall be submitted together with architectural and/or engineering stamps as required by KRS Chapters 322 and 323, to the Department of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. All such plans and specifications must be approved by the Department of Housing, Buildings and Construction, and appropriate

local building permits shall be obtained prior to commencement of construction.

Section 3. Submission of Plans and Specifications. (1) First stage. Schematic plans.

(a) Single line drawings of each floor shall show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room shall be noted. Drawings shall include typical patient room layouts (scaled one-fourth (1/4) inch = one (1) foot) with dimensions noted. The proposed roads and walks, service and entrance courts, parking and orientation shall be shown in a plot plan.

(b) If the project is an addition, or is otherwise related to existing buildings on the site, the plans shall show the facilities and general arrangements of those buildings.

(2) Second stage. Preliminary plans: preliminary sketch plans shall include the following:

(a) Architectural: plans of basement and floors.

(b) Outline specifications.

1. General description of the construction, including interior finishes, types and locations of acoustical material, and special floor covering;

2. Description of the air-conditioning, heating, and ventilation systems and their controls, duct and piping systems; and dietary, laundry, and other special equipment;

3. General description of electrical service including voltage, number of feeders, and whether feeders are overhead or underground.

(3) Third stage. Contract documents.

(a) Working drawings. Working drawings shall be complete and adequate for bid, contract, and construction purposes. Drawings shall be prepared for each of the following branches of the work: architectural, structural, mechanical, and electrical. They shall include the following:

1. Architectural drawings.

a. Approach plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new building structures, roadways, walks, and parking areas;

b. Plan of each basement, floor and roof;

c. Elevations of each facade;

d. Sections through building;

e. Required scale and full-size details;

f. Schedule of doors, windows, and room finishes;

g. Equipment. Location of all fixed equipment. Layout of typical and special rooms indicating all fixed equipment and major items of movable equipment. Equipment not included in contract shall be so indicated;

h. Conveying systems. Details of construction, machine and control spaces necessary, size and type of equipment, and utility requirements for the following: dumbwaiters: electric, hand, hydraulic; elevators: freight, passenger, patient; loading dock devices; pneumatic tube systems.

2. Structural drawings.

a. Plans for foundations, floors, roofs, and all intermediate levels with sizes, sections, and the relative location of the various structural members;

b. Dimensions of special openings;

c. Details of all special connections, assemblies, and expansion joints.

3. Mechanical drawings.

a. Heating, steam piping, and air-conditioning systems: radiators and steam heated equipment, such as warmers and steam tables; heating and steam mains and branches with pipe sizes; diagram of heating and steam risers with pipe sizes; sizes, types, and capacities of boilers, furnaces, hot water heaters with stokers, oil burners, or gas burners; pumps, tanks, boiler breeching, and piping and boiler room accessories; air-conditioning systems with required equipment, water and refrigerant piping and ducts; supply and exhaust ventilation systems with heating/cooling connections and piping; air quantities for all room supply and exhaust ventilating duct openings.

b. Plumbing, drainage, and standpipe systems: size and elevation of: street sewer, house sewer, house drains, street water main, and water service into the building; location and size of soil, waste, and water service with connections to house drains, clean-outs, fixtures, and equipment; size and location of hot, cold and circulating branches, and risers from the service entrance, and tanks; riser diagram of all plumbing stacks with vents, water risers, and fixture connections; oxygen and vacuum systems; standpipe and sprinkler systems where required; all fixtures and equipment that require water and drain connections.

4. Electrical drawings.

a. Electric service entrance with switches and feeders to the public service feeders, characteristics of the light and power current, transformers and their connections if located in the building;

b. Location of main switchboard, power panels, light panels, and equipment. Diagram of feeders and conduits (with schedule of feeder breakers or switches);

c. Light outlets, receptacles, switches, power outlets, and circuits;

d. Telephone layout showing service entrance, telephone switchboard, strip boxes, telephone outlets, and branch conduits;

e. Nurses' call systems with outlets for beds, duty stations, door signal light, annunciators, and wiring diagrams;

f. Emergency electrical system with outlets, transfer switch, sources of supply, feeders, and circuits.

(b) Specifications. Specifications shall supplement the drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment and shall include:

1. Cover or title sheet;

2. Index;

3. Sections describing materials and workmanship in detail for each class of work.

(c) Access to the work. Representatives of the appropriate state agencies shall have access at all reasonable times to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

Section 4. Compliance with Building Codes, Ordinances and Regulations. (1) This section may be administered independently from other sections of this regulation.

(2) General. Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(3) The following requirements shall apply where applicable and as adopted by the respective agency authority.

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended.

(b) Requirements for plumbing pursuant to 815 KAR 20:010 through 191, as amended.

(c) Requirements for air contaminants for incinerators pursuant to 401 KAR 59:020 and 401 KAR 61:010.

(d) Requirements for elevators pursuant to 803 KAR 4:010.

(e) Requirements for making buildings and facilities accessible to and usable by the physically handicapped, pursuant to KRS 198B.260 and regulations promulgated thereunder.

(4) Prior to occupancy, facility must have final approval from appropriate agencies.

(5) All facilities shall be currently approved by the Fire Marshal's Office in accordance with the Life Safety Code, before relicensure is granted by the licensure agency.

Section 5. Facility Requirements and Special Conditions. (1) Independent facilities with a capacity of fifty (50) beds or less present special problems. The sizes of the various departments shall depend upon the requirements of the facilities. Some functions allotted separate spaces or rooms in these general standards may be combined provided that the resulting plan will not compromise the standard of safety and of medical and nursing practices and the social needs of patients. Otherwise, the general standards set forth herein, including the area requirements, shall apply.

(2) Facilities shall be available to the public, staff, and patients who may be physically handicapped with special attention given to ramps, drinking fountain height, mirrors, etc.

(3) The number of beds in a nursing unit shall not exceed sixty (60) unless additional services are provided, as deemed necessary by the Board. At least sixty-six (66) percent of the beds shall be located in rooms designed for one (1) or two (2) beds unless health program needs indicate otherwise in intermediate care mentally retarded/developmentally disabled facilities.

(4) Access to the facility shall be by means of a paved or gravel roadway which shall be available for use by traffic prior to a license being issued to the facility for occupancy.

Section 6. Nursing Unit. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) Maximum room capacity: four (4) patients.

(b) Patient rooms shall be designed to permit not less than a four (4) foot space between beds, and at least three (3) foot space between the side of a bed and the nearest wall, fixed cabinet, or heating/cooling element. A minimum of four (4) feet is required between foot of bed and opposite wall, or foot of opposite bed in multibed rooms.

(c) Window. All patient rooms must have windows opening to the outside. The sill shall not be higher than three (3) feet above the floor and shall be above grade. Window area shall be at least eight (8) percent of patient room floor area.

(d) Lavatory. In single and two (2) bed rooms with a private toilet room, the lavatory may be located in the toilet room. Where two (2)

patient rooms share a common toilet, a lavatory shall be provided in each patient room;

(e) Wardrobe or closet for each patient. Minimum clear dimensions shall be one (1) foot and ten (10) inches deep by one (1) foot and eight (8) inches wide with full length hanging space with a clothes rod and shelf.

(f) Cubicle curtains, or equivalent built-in devices shall be provided for complete privacy for each patient in each multibed patient room and in tub, shower and toilet rooms.

(g) No patient room shall be located more than 120 feet from the nurses' station, the clean workroom, and the soiled workroom. No room shall be used as a patient room where the access is through another patient's room.

(2) Patient toilet rooms:

(a) Where a centralized toilet area is used, the facility shall provide for each sex on every floor the following: one (1) toilet for each eight (8) residents or major fraction thereof and one (1) lavatory for each sixteen (16) residents or major fraction thereof. Toilets must be separated by a permanent partition and at least one (1) toilet for each sex must be designed for wheelchair use.

(b) Grab bars shall be provided at all toilets. At least one (1) toilet shall be easily usable by wheelchair patients.

(c) Doors to toilet rooms shall have a minimum width of two (2) feet and ten (10) inches to admit wheelchair.

(3) Service areas in each nursing unit. The size of each service area will depend on the number and types of beds within the unit and shall include:

(a) Nurses' station. For nurses' charting, doctors' charting, communications, and storage for supplies and nurses' personal effects.

(b) Staff lounge area with personal storage space and a toilet room for staff.

(c) Visitors toilet room. The facility shall provide a toilet for visitors. The staff toilet room may serve as the visitors toilet room if marked and accessible.

(d) Clean workroom for storage and assembly of supplies for nursing procedures with a work counter and sink.

(e) Soiled workroom with a clinical sink, work counter with two (2) compartment sink, waste receptacles, and soiled linen receptacles.

(f) Medication area adjacent to nurses' station with sink, refrigerator, locked storage, and facilities for preparation and dispensing of medication. (May be designated area within clean workroom if a self-contained cabinet is provided.) The controlled substances locker must be under double lock.

(g) Clean linen storage with enclosed storage space. (May be designated area within the clean workroom.)

(h) Equipment storage room for storage of IV stands, inhalators, air mattresses, walkers, and similar bulky equipment.

(i) Patient baths. One (1) shower stall or one (1) bathtub shall be required for each twelve (12) beds not individually served. There shall be at least one (1) free standing bathtub in each bathroom. Grab bars or patient lift with a safety device shall be provided at all tubs. Grab bars shall be provided at all shower stalls. Each bathtub or shower enclosure in central bathing facilities shall provide space for private use, for dressing and for a wheelchair and attendant. At least one (1)

shower in the central bathing facilities shall not be less than four (4) feet square, without curbs, and designed to permit use from a wheelchair. Soap dishes in showers and bathrooms shall be recessed.

(j) Janitor's closet for storage of housekeeping supplies and equipment with floor receptor or service sink.

(k) Bedpan washing facilities on each floor and located so that bedpans need not be carried through lobbies and dining areas.

(4) Patients' dining, TV viewing and recreation areas:

(a) The total areas set aside for these purposes shall be not less than thirty (30) square feet per bed for the first fifty (50) beds and twenty (20) square feet per bed for all beds in excess of fifty (50). Additional space shall be provided for outpatients if they participate in a day care program.

(b) Storage shall be provided for recreational equipment and supplies. (Such as wall cabinets or closets.)

(c) The areas set aside for these purposes must be readily accessible to wheelchair patients and shall be of sufficient size to accommodate equipment and permit unobstructed movement of wheelchair patients and personnel responsible for instructing and supervising patients.

Section 7. Dietary Department. If a commercial service will be used or meals will be provided by an adjacent hospital, dietary areas and equipment shall be designed to accommodate the requirements for sanitary, efficient, and safe storage, processing, and handling, otherwise the following shall be provided:

(1) Food preparation center with a lavatory but no mirror.

(2) Food serving facilities to accommodate patient and staff.

(3) Dishwashing and pot-washing facilities. Dish and utensil washing equipment shall be used that will result in sanitized serviceware and will prevent recontamination.

(4) Refrigerated storage which can accommodate a three (3) day supply minimum.

(5) Dry storage which can accommodate a three (3) day supply minimum.

(6) Food carts. If the facility uses food carts, space shall be provided in the kitchen or in a separate storage area for the cleaning and storage of food carts.

(7) Janitor's closet for storage for housekeeping supplies and equipment with a floor receptor or service sink.

(8) A toilet room conveniently accessible to the dietary department. If a toilet room is built within the dietary department it must have a two (2) door separation from food preparation area or dining areas.

Section 8. Administration Department. The facility shall have adequate administrative, public, and staff facilities (e.g., offices, lobby, toilet facilities) to accommodate the needs of the public, patients, and staff without interfering with the provision of medical care services.

Section 9. Laundry. The following shall be included:

(1) Soiled linen room;

(2) Clean linen room;

(3) Lavatory accessible from soiled, clean, and processing rooms;

(4) Laundry processing room, and storage for laundry supplies. (Need not be provided if laundry is processed outside the facility.);

(5) Janitor's closet with storage for housekeeping supplies and equipment and floor receptor or service sink.

Section 10. Storage and Service Areas. The following shall be included:

(1) Sufficient storage space for general storage requirements.

(2) Engineering service and equipment areas. The following shall be provided where applicable:

(a) Boiler room;

(b) Mechanical and electrical equipment room(s) (can be combined with boiler room);

(c) Storage room for housekeeping equipment (need not be provided if space is available in janitor's closets or elsewhere);

(d) Refuse area for holding trash prior to disposal which is located convenient to service entrance.

Section 11. Details and Finishes. A high degree of safety for the occupants to minimize the incidence of accidents shall be provided. Hazards such as sharp corners shall be avoided. All details and finishes shall meet the following requirements:

(1) Details.

(a) Handrails shall be provided on both sides of corridors used by patients in intermediate care facilities with a clear distance of one and one-half (1 1/2) inches between handrail and wall.

(b) All doors to patient-room toilet rooms and patient-room bathrooms shall swing outward or shall be equipped with hardware which will permit access in any emergency.

(c) All doors opening onto corridors shall be swing-type except elevator doors. Alcoves and similar spaces which generally do not require doors are excluded from this requirement.

(d) Thresholds and expansion joint covers, if used, shall be flush with the floor.

(e) Grab bars and accessories in patient toilet rooms, shower rooms, and bathrooms shall have sufficient strength and anchorage to sustain a load of 250 pounds for five (5) minutes.

(f) Lavatories intended for use by patients shall be installed to permit wheelchairs to slide under.

(g) Mirrors shall be arranged for convenient use by patients in wheelchairs as well as by patients in standing position.

(h) Towel rack or dispenser shall be provided at all lavatories and sinks used for hand-washing.

(i) Ceiling heights.

1. Boiler room. Not less than two (2) feet and six (6) inches above the main boiler header and connecting piping with adequate headroom under piping for maintenance and access;

2. Corridors, storage rooms, patients' toilet rooms, and other minor rooms. Not less than seven (7) feet and six (6) inches;

3. All other rooms. Not less than eight (8) feet.

(k) Boiler room, food preparation centers, and laundries shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature of eighty-five (85) degrees

Fahrenheit.

(1) Noise reduction criteria. The ceilings of the following areas shall be designed to reduce noise transmission:

1. Corridors in patient areas;

2. Nurses' stations;

3. Work areas, such as utility rooms;

4. Lobbies and recreation areas.

(m) Special attention shall be given to sound transmission from boiler rooms, mechanical rooms, and kitchen, to patient bedroom areas.

(2) Finishes.

(a) Floors generally shall be easily cleanable and shall have the wear resistance appropriate for the location involved. Floors in kitchen and related spaces shall be waterproof and grease-proof. In all areas where floors are subject to wetting, they shall have a nonslip finish.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an unbroken surface.

(c) Walls generally shall be washable and in the immediate area of plumbing fixtures, the finish shall be moisture-proof. Wall bases in dietary areas shall be free of spaces that can harbor insects.

(d) Ceilings generally shall be washable or easily cleanable. This requirement does not apply to boiler rooms, mechanical and building equipment rooms, shops and similar spaces.

Section 12. Elevators. Elevators shall conform with 815 KAR 4:010. (1) Elevators, where required. All facilities where either patient beds or inpatient facilities such as diagnostic, recreation, patient dining or therapy rooms are located on other than the first floor, shall have electric or electrohydraulic elevators as follows:

(a) Number of elevators. All facilities with either patient beds or inpatient facilities located on any floor other than the first floor shall have at least one (1) hospital-type elevator and such additional elevators as determined by the licensure agency from a study of the facility plan and the estimated vertical transportation requirements.

(b) Cars and platforms. Cars of hospital-type elevators shall have inside dimensions that will accommodate a patient's bed and attendants and shall be at least five (5) feet wide by seven (7) feet and six (6) inches deep; car doors shall have a clear opening of not less than three (3) feet and eight (8) inches. Cars of all other required elevators shall have a clear opening of not less than three (3) feet.

(c) Leveling. Elevators shall have automatic leveling of the two (2) way automatic maintaining type with accuracy within plus or minus one-half (1/2) inch.

Section 13. Construction. Foundations shall rest on natural solid ground if a satisfactory soil is available at reasonable depths. Proper soil bearing values shall be established in accordance with recognized standards. If solid ground is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement.

Section 14. Mechanical Requirements. (1) Steam and hot water systems.

(a) Boilers. If boilers are used a minimum of

two (2) must be provided; the combined capacity of the boilers, based upon the published Steel Boiler Institute or Institute of Boiler and Radiator Manufacturer's net rating, must be able to supply 150 percent of the normal requirements of all systems and equipment.

(b) The design and installation of boilers in the facility shall comply with 815 KAR 15:010 through 060.

(2) Temperature and ventilating systems.

(a) Temperatures. A minimum temperature of seventy-two (72) degrees Fahrenheit shall be provided for in occupied areas in winter conditions. A maximum temperature of eighty-five (85) degrees Fahrenheit shall be provided for in occupied areas in summer conditions.

(b) Ventilation systems details. All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at or near the point of discharge from the building. The ventilation rates shown in Table 1, Section 16 of this regulation, shall not be considered as precluding the use of higher ventilation rates if they are required to meet design conditions.

1. Outdoor ventilation air-intakes, other than for individual room units, shall be located as far away as practicable but not less than twenty-five (25) feet from the exhausts from any ventilating system or combustion equipment. The bottom of outdoor intakes serving central air systems shall be located as high as possible but not less than eight (8) feet above the ground level or if installed through the roof, three (3) feet above roof level.

2. The ventilation systems shall be designed and balanced to provide the general pressure relationship to adjacent areas shown in Table 1, Section 16 of this regulation.

3. Room supply air inlets, recirculation, and exhaust air outlets shall be located not less than three (3) inches above the floor.

4. Corridors shall not be used to supply air to or exhaust air from any room, except that exhaust air from corridors may be used to ventilate rooms such as bathrooms, toilet rooms, or janitor's closets which open directly on corridors.

(3) Plumbing and other piping systems.

(a) Lavatories and sinks required in patient care areas shall have the water supply spout mounted so that its discharge point is a minimum distance of five (5) inches above the rim of the fixture. All fixtures used by medical and nursing staff, and all lavatories used by patients and food handlers shall be trimmed with valves which can be operated without the use of hands. Where blade handles are used for this purpose, they shall be at a distance from the center line of the sink to be operational.

(b) Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(4) Water supply system:

(a) Systems shall be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of fifteen (15) pounds per square inch during maximum demand periods.

(b) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(c) Hot, cold and chilled water piping and waste piping on which condensation may occur

shall be insulated. Insulation of cold and chilled water lines shall include an exterior vapor barrier.

(d) Backflow preventers (vacuum breakers) shall be installed on hose bibbs and on all fixtures to which hoses or tubing can be attached such as janitor's sinks and bedpan flushing attachments.

(e) Hot water distribution systems shall be arranged to provide hot water at each fixture at all times.

(f) Piping over food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage of, or condensation from, necessary overhead piping systems.

(5) Hot water heaters and tanks.

(a) The hot water heating equipment shall have sufficient capacity to supply the water at the temperature and amounts indicated below:

	Use		
	Patient	Dishwasher	Laundry
Gal/hr/bed	6 1/2	4	4 1/2
Temp. F.	100-110	180*	140-180**

*Temperature may be reduced to 140 if chloritizer is used.

**If the temperature used is below 180, the facility shall utilize detergents and other additives to insure that the linens will be adequately cleaned.

(b) Storage tank(s) shall be provided and shall be fabricated of corrosion-resistant metal, or have noncorrosive lining.

(6) Plumbing approval. Prior to final approval of the plans and specifications by the licensure agency, the plumbing plans and specifications must be approved by the Division of Plumbing, Department of Housing, Buildings and Construction.

Section 15. Electrical Requirements. (1) General. Electrical requirements of the Kentucky Building Code shall apply where applicable.

(2) The wiring in each facility shall be inspected by a certified electrical inspector and a certificate of approval shall be issued to the facility, prior to occupancy; however, the wiring in existing buildings shall be approved by a certified electrical inspector only when the building has not been previously so approved for health care occupancy or where the State Fire Marshal finds that a hazardous condition exists.

(3) Switchboard and power panels. All breakers and switches shall be indexed.

(4) Lighting.

(a) All spaces occupied by people, machinery, and equipment within buildings, and the approaches thereto, and parking lots shall have electric lighting.

(b) Patients' bedrooms shall have general lighting. A reading light shall be provided for each patient when appropriate. Patients' reading lights and other fixed lights not switched at the door shall have switch controls convenient for use at the luminaire. Fixed type night lights shall be provided in each patient's room.

(c) Lighting levels for the facility shall comply with the requirements of Table 2, Section 16 of this regulation.

(5) Receptacles (convenience outlets).

(a) Bedroom. Each patient bedroom shall have duplex receptacles as follows: one (1) each side of the head of each bed (for parallel adjacent beds, only one (1) receptacle is required between the beds), receptacles for luminaires, television and motorized beds, if used, and one (1) receptacle on another wall.

(b) Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart in all corridors and within twenty-five (25) feet of ends of corridors.

(6) Nurses' calling system. A nurses' visible signal calling station shall be installed at each patient bed and in each patient toilet, bath, and shower room. The nurses' call in toilet, bath, or shower room, shall be an emergency call. All calls shall register at the nurses' station and shall actuate a visible signal in the corridor at the patient's door, in the clean workroom, and the soiled workroom of the nursing unit.

(7) Emergency electric service.

(a) General. To provide electricity during an interruption of the normal electric supply that could affect the nursing care, treatment, or safety of the occupants, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power.

(b) Sources. The source of this emergency electric service shall be an emergency generating set, when normal service is supplied by one (1) or more central station transmission lines.

(c) Emergency generating set.

1. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system. The emergency generator set shall be sufficient kilowatt capacity to supply all lighting and power load demands of the emergency system. The power factor rating of the generator shall be not less than eighty (80) percent.

2. When the facility is supplied by at least two (2) dedicated and separate utility service feeders, an emergency generating set is not required.

(d) Emergency electrical connections. Emergency electric service shall be provided to circuits as follows:

1. Lighting.

a. Exitways and all necessary ways of approach thereto, including exit signs and exit direction signs, exterior of exits, exit doorways, stairways, and corridors;

b. Dining and recreation rooms;

c. Nursing station and medication preparation area;

d. Generator set location, switch-gear location, and boiler room;

e. Elevator (if required for emergency).

2. Equipment. Essential to life safety and for protection of important or vital materials:

a. Nurses' calling system;

b. Sewage or sump lift pump, if installed;

c. At least one (1) duplex receptacle in each patient room;

d. Equipment such as burners and pumps necessary for operation of one (1) or more boilers and their necessary auxiliaries and controls, required for heating and sterilization;

e. Details. The emergency system shall be so controlled that after interruption of the normal electric power supply, the generator is brought

to full voltage and frequency and connected within ten (10) seconds through one (1) or more primary automatic transfer switches to all emergency lighting, all alarms, nurses' call, and receptacles in patient corridors. All other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification. Storage-battery-powered lights shall not be used as a substitute for the requirement of a generator. Where fuel is normally stored on the site, the storage capacity shall be sufficient for twenty-four (24) hour operation of required emergency electric services. Where fuel is normally piped underground to the site from a utility distribution system, storage facilities on the site will not be required.

f. Emergency heating. Where electricity is the only source of power normally used for space heating, an alternate emergency heating system for the heating of corridors will be required. Emergency heating of corridors will not be required in areas where the facility is supplied by at least two (2) utility service feeders, each supplied by separate generating sources or a network distribution system fed by two (2) or more generators, with the facility feeders so routed, connected, and protected so that a fault any place between the generators and the facility will not be likely to cause an interruption of more than one (1) of the intermediate care facility's service feeders. If there is written plan for the transfer of patients within a reasonable time to other facilities with which the intermediate care facility has written transfer agreements, the above alternate emergency heating system will not be required.

Section 16. Appendix: Table 1 - Pressure Relationships and Ventilation of Certain Intermediate Care Areas. Table 2 - Lighting Levels For Intermediate Care Facilities.

Table 1. Pressure Relationships and Ventilation of Certain Intermediate Care Areas

Area Designation	Pressure Relationship to Adjacent Areas	All Supply Air From Outdoors	Minimum Air Changes of Outdoor Air per Hour
Patient room	0	—	1
Patient area corridor	0	—	2
Treatment room	0	Yes	2
Physical therapy and hydrotherapy if applicable	N	—	2
Dining and recreation areas	0	—	2
Soiled workroom	N	—	2
Clean workroom	P	Yes	2
Toilet room	N	—	—
Bedpan room if applicable	N	—	—
Bathroom	N	—	—
Janitor's closet	N	—	—
Linen and trash chute rooms	N	—	—
Food preparation Center	0	Yes	2

Dishwashing area	N	--	--
Dietary day storage	0	--	--
Laundry, general	0	Yes	2
Soiled linen sorting and storage	N	--	--
Clean linen storage	P	--	2

P = Positive N = Negative 0 = Equal -- = Optional

Table 1. Continued

Area Designation	Minimum Total Air Changes Per Hour	All Air Exhausted Directly to Outdoors
Patient room	4	--
Patient area corridor	4	--
Treatment room	6	Yes
Physical therapy and hydrotherapy if applicable	6	--
Dining and recreation areas	4	--
Soiled workroom	4	Yes
Clean workroom	4	--
Toilet room	10	Yes
Bedpan room if applicable	10	Yes
Bathroom	10	Yes
Janitor's closet	10	Yes
Linen and trash chute rooms	10	Yes
Food preparation center	10	Yes
Dishwashing area	10	Yes
Dietary day storage	2	--
Laundry, general	10	Yes
Soiled linen sorting and storage	10	Yes
Clean linen storage	2	--

P = Positive N = Negative 0 = Equal -- = Optional

Table 2. Lighting Levels for Intermediate Care Facilities

Area	Foot-candles*
Administrative and lobby areas, day	50
Administrative and lobby areas, night	20
Barber and beautician areas, if applicable	50
Corridors and interior ramps	20
Corridor night lighting	3
Dining area and kitchen	30
Doorways	10
Exit stairways and landings	5
Janitor's closet	15
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Patient care unit (or room), general	10
Patient care room, reading	30
Recreation area (floor level)	50
Stairways other than exits	30
Toilet and bathing facilities	30
Utility room, general	20
Utility room, work counter	50

*Minimum on task at anytime

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:058. Operation and services;
primary care center.

RELATES TO: KRS 216B.010 to 216B.130,
216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040],
216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and
216B.105 mandate that the Kentucky Cabinet for
Human Resources [Health Facilities and Health
Services Certificate of Need and Licensure
Board] regulate health facilities and health
services. This regulation provides [for the]
licensure requirements for the operation of
[primary care centers] and [the] services [to
be] provided by primary care centers.

[Section 1. Scope of Operation and Services. A
primary care center is a community-oriented
organization with permanent facilities that
provides the entry point into the health care
delivery system to patients of all ages, in a
defined geographic service area. A primary care
center provides a variety of preventive,
diagnostic, therapeutic and referral services by
appropriately licensed or certified members of
the health professions to meet usual health care
needs in a manner that ensures the continuity of
care.]

Section 1. [2.] Definitions. (1) "Center"
means a primary care center.

(2) "Qualified dietician" or "nutritionist"
means:

(a) A person who has a bachelor of science
degree in foods and nutrition, food service
management, institutional management or related
services and has successfully completed a
dietetic internship or coordinated undergraduate
program accredited by the American Dietetic
Association (ADA) and is a member of the ADA or
is registered as a dietician by ADA; or

(b) A person who has a master's degree in
nutrition and is a member of ADA or is eligible
for registration by ADA; or

(c) A person who has a bachelor of science
degree in home economics and three (3) years of
work experience with a registered dietician.

Section 2. Scope of Operation and Services. A
primary care center is a community-oriented
organization with permanent facilities that
provides the entry point into the health care
delivery system to patients of all ages, in a
defined geographic service area. A primary care
center provides a variety of preventive,
diagnostic, therapeutic and referral services by
appropriately licensed or certified members of
the health professions to meet usual health care
needs in a manner that ensures the continuity of
care.

Section 3. Administration and Operations. (1)
Licensee.

(a) The licensee shall be legally responsible
for the center and for compliance with federal,
state and local laws and regulations pertaining
to the operation of the center.

(b) The licensee shall establish written
policies, for the administration and operation
of the service.

(2) Administrator. All centers shall have an
administrator who shall be responsible for the
operation of the center and shall delegate such
responsibility in his absence.

(3) Policies.

(a) Administrative policies. The center shall
have written administrative policies covering
all aspects of the center's operation, including:

1. A description of organizational structure,
staffing and allocation of responsibility and
accountability;

2. A description of referral linkages with
inpatient facilities and other providers;

3. Policies and procedures for the guidance
and control of personnel performances;

4. A description of services included in the
center's program;

5. A description of the administrative and
patient care records and reports;

6. A policy for an expense and revenue
accounting system following generally accepted
accounting procedures; and

7. A policy to specify the provision of
emergency medical services.

(b) Patient care policies. Patient care
policies shall be developed by the staff
physician(s) and other professional staff for
all medical aspects of the center's program to
include:

1. Written protocol(s) (i.e., standing orders,
rules of practice, medical directives) applying
to service provided by the center both for
preventive health services as well as for
illness and injury which explicitly direct the
step-by-step collection of subjective and
objective data from the patient. The protocols
shall further direct data analysis and direct
explicit medical action depending upon the data
collected and also include the rationale for
each decision made. The protocols shall be
signed by the licensed staff physician of the
center.

2. The center shall have patient care policies
for patients held in the center's
holding-observation accommodations.

(c) A system shall be established such that,
when feasible, the patient is always cared for
by the same health professional or health team,
on both an inpatient and an ambulatory basis, to
assure continuity of care.

(d) Patient rights policies. The center shall
adopt written policies regarding the rights and
responsibilities of patients. These patients'
rights policies shall assure that each patient:

1. Is informed of these rights and of all
rules and regulations governing patient conduct
and responsibilities, including a procedure for
handling patient grievances.

2. Is informed of services available at the
center and of related charges including any
charges not covered under Medicare, Medicaid, or
other third-party payor arrangements.

3. Is informed of his medical condition,
unless medically contraindicated (as documented
in his medical record), and is afforded the
opportunity to participate in the planning of
his medical treatment and to refuse to
participate in experimental research.

4. Is encouraged and assisted to understand
and exercise his patient rights; to this end he
may voice grievances and recommend changes in
policies and services. Upon the patient's
request the grievances and recommendations will
be conveyed within a reasonable time to an
appropriate decision making level within the

organization which has authority to take corrective action.

5. Is assured confidential treatment of his records and is afforded the opportunity to approve or refuse their release to any individual not involved in his care except as required by Kentucky law or third-party payment contract.

6. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in the care of his personal health needs.

(4) Personnel.

(a) Primary care provider team. The center shall have one (1) or more full-time licensed physician(s) and one (1) or more full-time advanced registered nurse practitioner(s) or one (1) or more full-time registered nurse(s).

1. Physician. The physician, shall be in active practice, and shall be responsible for all medical aspects of the center, and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. Physicians employed by or having an agreement with the center to perform direct medical services shall be qualified to practice general medicine (e.g., general practitioners, family practitioners, obstetrician/gynecologists, pediatricians, and internists). Physicians employed by or having an agreement with the center to perform direct medical services should be members of the medical staff of, or hold at least courtesy staff privileges at, one (1) or more hospitals with which the center has a formal transfer agreement.

2. Nurse. The advanced registered nurse practitioner(s) and the registered nurse(s) shall provide services within their respective scope of practice pursuant to KRS Chapter 314.

(b) In-service training. All center personnel shall participate in ongoing in-service training programs relating to their respective job activities. These programs shall include thorough job orientation for new personnel, regular in-service training programs, emphasizing professional competence and the human relationship necessary for effective health care.

(5) Medical records.

(a) The center shall maintain a type of family-centered medical records identifying all family members (a single patient may be considered a family unit). Medical records shall contain at least the following:

1. Medical and social history, including data obtainable from other providers;

2. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;

3. Reports of all laboratory, x-ray, and other test findings;

4. Documentation of all referrals made, to include reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Confidentiality of all patient records shall be maintained at all times.

(c) Transfer of records. The center shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and the center shall, upon proper release, transfer medical records or an abstract thereof when requested.

(d) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(6) Linkage agreements.

(a) The center shall have linkages through written agreements with providers of other levels of care which may be medically indicated to supplement the services available in the center. These linkages shall include:

1. Hospitals; and

2. Emergency medical transportation services in the service area.

(b) Linkage agreements with inpatient care facilities shall incorporate provisions for appropriate referral and acceptance of patients from the center, provisions for appropriate coordination of discharge planning with center staff, and provisions for the center to receive a copy of the discharge summary for each patient referred to the center.

(c) The written transfer agreements shall include designation of:

1. Responsibility for transfer of information;

2. Responsibility for provision of transportation;

3. Responsibility for sharing of services, equipment, and personnel;

4. Responsibility for provision of total care or portions thereof in relation to facility and agency capability.

(d) These linkage requirements shall not be construed as criteria for determining financial liability in the case of provision of services by the center through linkage agreements.

(7) Utilization review and medical audit. In order to determine the appropriateness of the services delivered, the center shall establish procedures for the medical audit and utilization review of services provided in the center. The center may use professional capabilities and assistance obtainable from other agencies and sources. There shall be a written plan for utilization review developed by the center including frequency of reviews and composition of the body conducting the review.

Section 4. Provision of Services. (1) Hours of operation and coverage. Scheduled hours of the center's operation shall reasonably accommodate the various segments of the population served. Provisions shall be made for scheduled evening hours and/or weekend hours if needed.

(2) Basic services. The center shall provide directly (except as noted) at least the following services:

(a) Medical diagnostic and treatment services of sufficiently broad scope to accommodate the basic health needs (including prenatal and postnatal care) of all age groups;

(b) Emergency services.

1. The center shall provide emergency medical services during the regularly scheduled hours for treatment of injuries and minor trauma.

2. The center shall post in a conspicuous area at the entrance, visible from the outside of the center, the hours that emergency medical services will be available in the center, and where emergency medical services not provided by the center can be obtained during and after the center's regular scheduled hours of operation.

(c) Preventive health services of sufficiently

broad scope to provide for the usual and expected health needs of persons in all age groups.

(d) Education in the appropriate use of health services and in the contribution each individual can make to the maintenance of his own health.

(e) Chronic illness management.

(f) Laboratory, x-ray and treatment services shall be provided directly or arranged through other providers.

(3) Supplemental services.

(a) The center shall provide additional professional services to complement the basic services provided in the program of the center. At least two (2) of the following services shall be provided by the center at some time during the scheduled hours of operation, either directly or by contract on site. The center shall establish linkages with those supplemental services which currently exist in the service area and which are not provided directly or by contract by the center to include:

1. Pharmacy: licensed pharmacist;
2. Dentistry: licensed dentist;
3. Optometry: licensed optometrist or ophthalmologist;
4. Midwifery services: certified nurse midwife;
5. Family planning;
6. Nutrition: qualified dietician or nutritionist;
7. Social service counseling: licensed social worker; and
8. Home health: licensed home health agency.

(b) Any center which does not have a linkage agreement with the above listed supplemental services but which documents a good faith attempt to enter into such a linkage agreement, shall be exempt from the linkage agreement requirement.

(4) Extension services. The center may provide primary care services on a temporary or regular basis in a location(s) separate from its permanent facility, provided any extension services are set forth in the licensure application and meet Kentucky Certificate of Need law requirements (KRS 216B.010 to 216B.130). The extension shall comply with the minimum staffing requirements of Section 3(4) of this regulation.

(a) The center shall have written policies and procedures pertaining to all aspects of the extension service, including patient care (including protocols) and patient rights, services, medical records, linkage agreements, hours of operation and staffing.

(b) The extension service shall be located within the primary care center's service area.

(c) The licensee of the center shall be responsible for all aspects of any extension services.

(d) The center's utilization review program shall include any extension services.

(5) Holding-observation accommodations. Utilization of holding-observation accommodations maintained by the center will be allowed within the limitations outlined below:

(a) Utilization of these accommodations shall not exceed twenty-four (24) hours medical observation and/or recuperation in anticipation of transfer to an inpatient facility or to the patient's home.

(b) The decision to hold a patient shall be the responsibility of a physician(s) on the medical staff of the center.

(c) A registered nurse shall be on duty at the

center when a patient is held in the center's accommodations beyond regular scheduled hours.

(6) Plan of care. The center shall establish and periodically update a written plan of care of all patients and/or family units, reflecting staff discussion of all medical and social information obtained relative to the patient and his family.

(7) Telephone screening and referral. The center shall provide telephone screening and referral services for prospective patients after regularly scheduled hours of operation.

Section 5. Separability. If any clause, sentence, paragraph, section or part of these regulations shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment was rendered.

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons

why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:072. Operation and services; ambulatory care clinics.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides [for the] licensure requirements for the operation of [ambulatory care clinics] and [the] services [to be] provided by ambulatory care clinics.

[Section 1. Scope of Operations and Services. An ambulatory care clinic is an establishment with organized medical staffs, permanent facilities and medical services to provide diagnosis and treatment for patients who have a variety of medical conditions and do not currently require inpatient care.]

Section 1. [2.] Definitions. "Clinic" means ambulatory care clinic.

Section 2. Scope of Operations and Services. An ambulatory care clinic is an establishment with organized medical staffs, permanent facilities and medical services to provide diagnosis and treatment for patients who have a variety of medical conditions and do not currently require inpatient care.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the clinic and for compliance with federal, state and local laws and regulations pertaining to the operation of the clinic.

(b) The licensee shall establish written policies for the administration and operation of the clinic.

(c) The licensee shall establish lines of authority and designate the person who will be principally responsible for the daily operation of the clinics.

(2) Policies.

(a) Administrative policies. The clinic shall

have written administrative policies covering all aspects of the clinic's operation, including:

1. A description of organizational structure, staffing and allocation of responsibility and accountability;

2. A description of referral linkages with inpatient facilities and other providers;

3. Policies and procedures for the guidance and control of personnel performances;

4. A description of services included in the clinic's program;

5. A description of the administrative and patient care records and reports;

6. Procedures to be followed in the storage, handling and administration of drugs and biologicals; and

7. A policy to specify the provision of emergency medical services.

(b) Patient rights policies. The clinic shall adopt written policies regarding the rights and responsibilities of patients. These patients' rights policies shall assure that each patient:

1. Is informed of these rights and of all rules and regulations governing patient conduct and responsibilities, including a procedure for handling patient grievances.

2. Is informed of services available at the clinic and of related charges including any charges not covered under Medicare, Medicaid, or other third-party payor arrangements.

3. Is informed of his medical condition, unless medically contraindicated (as documented in his medical record), and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research.

4. Is encouraged and assisted to understand and exercise his patient rights; to this end he may voice grievances and recommend changes in policies and services. Upon the patient's request the grievances and recommendations will be conveyed within a reasonable time to an appropriate decision making level within the organization which has authority to take corrective action.

5. Is assured confidential treatment of his records and is afforded the opportunity to approve or refuse their release to any individual not involved in his care except as required by Kentucky law or third-party payment contract.

6. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in the care of his personal health needs.

(3) Personnel.

(a) The clinic shall have at least one (1) licensed physician(s) and at least one (1) registered nurse(s) present during operating hours. A licensed physician shall be designated as medical director.

1. Physician. The physician shall be in active practice, and shall be responsible for all medical aspects of the center, and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. Physicians employed by or having an agreement with the clinic to perform direct medical services shall be qualified to practice general medicine (e.g., general practitioners, family practitioners, obstetrician/gynecologists, pediatricians, and internists). Physicians employed by or having an agreement with the clinic to perform direct medical services should be members of the medical staff, or hold at

least courtesy staff privileges, at one (1) or more hospitals with which the clinic has a formal linkage agreement.

2. Nurse. The registered nurse(s) shall provide services within their respective scope of practice pursuant to KRS Chapter 314.

(b) In-service training. All clinic personnel shall participate in ongoing in-service training programs relating to their respective job activities. These programs shall include thorough job orientation for new personnel, regular in-service training programs, emphasizing professional competence, and the human relationship necessary for effective health care.

(4) Medical records.

(a) The clinic shall maintain medical records to contain at least the following:

1. Medical and social history, including data obtainable from other providers;

2. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;

3. Reports of all physical examinations, laboratory, x-ray, and other test findings; and

4. Documentation of all referrals made, to include reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Confidentiality of all patient records shall be maintained at all times.

(c) Transfer of records. The clinic shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and the clinic shall, upon proper release, transfer medical records or an abstract thereof when requested.

(d) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(5) Linkage agreements.

(a) The clinic shall have linkages through written agreements with providers of other levels of care which may be medically indicated to supplement the services available in the clinic. These linkages shall include:

1. Hospitals; and

2. Emergency medical transportation services in the service area.

(b) Linkage agreements with inpatient care facilities shall incorporate provisions for appropriate referral and acceptance of patients from the clinic, provisions for appropriate coordination of discharge planning with clinic staff, and provisions for the clinic to receive a copy of the discharge summary for each patient referred to the clinic.

(6) Utilization review and medical audit. In order to determine the appropriateness of the services delivered there shall be a written plan for utilization review developed by the clinic which specifies the frequency of reviews and composition of the body conducting the review.

Section 4. Provision of Services. (1) Hours of operation and coverage. Scheduled hours of the clinic's operation shall reasonably accommodate the various segments of the population served. Provisions shall be made for scheduled evening

hours and/or weekend hours.

(2) Basic services. The clinic shall provide directly (except as noted) at least the following services:

(a) Medical diagnostic and treatment services of sufficiently broad scope to accommodate the basic health needs (including prenatal and postnatal care) of all age groups;

(b) Emergency services.

1. The clinic shall provide emergency medical services during the regularly scheduled hours for treatment of injuries and minor trauma.

2. The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services will be available in the clinic and where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled hours of operation.

(c) Preventive health services of sufficiently broad scope to provide for the usual and expected health needs of persons in all age groups;

(d) Education in the appropriate use of health services and in the contribution each individual can make to the maintenance of his own health;

(e) Chronic illness management; and

(f) Laboratory, x-ray and treatment services provided directly or arranged through other providers.

(3) Telephone screening and referral. The clinic shall provide telephone screening and referral services for prospective patients after regularly scheduled hours of operation.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of

regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

**CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)**

902 KAR 20:078. Operations and services; group homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides [for the] licensure requirements for the operation of [group homes] and [the] services to be provided by group homes.

[Section 1. Scope of Operations. A group home is a facility providing a homelike environment and specialized services in accordance with individualized habilitation plans to not less than four (4) nor more than eight (8) persons with mental retardation or developmental disabilities at a location not adjacent to or part of a mental health or mental retardation institution.]

Section 1. [2.] Definitions. (1) "Mental retardation" means a significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior which is first manifested during the developmental period.

(2) "Developmental disability" means a severe chronic disability which is attributable to a mental or physical impairment or combination of mental and physical impairments manifested before the person attains the age of twenty-two (22) and is likely to continue indefinitely. This disability results in substantial

limitations in areas of major life activity including self-care, receptive and expressive language, learning, mobility, capacity for independent living and economic sufficiency and requires individually planned and coordinated services of a lifelong or extended duration.

(3) "Normalization principle" is the utilization of means which are as culturally normative as possible in order to establish and maintain personal behavior and characteristics which are as culturally normative as possible.

(4) "Qualified mental retardation or developmental disability professional" means:

(a) A physician with specialized training or one (1) year of experience in treating persons with mental retardation or developmental disabilities; or

(b) A psychologist with a doctoral or master's degree from an accredited program with specialized training or one (1) year of experience in treating persons with mental retardation or developmental disabilities; or

(c) An educator with at least a bachelor's degree in education and with specialized training or one (1) year of experience in working with persons with mental retardation or developmental disabilities; or

(d) A social worker with at least a bachelor's degree from an accredited program and with specialized training or one (1) year of experience working with persons having mental retardation or developmental disabilities, or a field other than social work and at least three (3) years of social work experience under the supervision of a qualified social worker; or

(e) A licensed physical therapist or an occupational therapist who is a graduate of a program of physical or occupational therapy approved by the Council on Medical Education of the American Medical Association and who has specialized training or one (1) year of experience in treating persons with mental retardation or developmental disabilities; or

(f) A speech pathologist or audiologist who has been granted a certificate of clinical competence by the American Speech and Hearing Association or who has completed the equivalent educational and experimental requirements for such a certificate and has specialized training or one (1) year of experience in training persons with mental retardation or developmental disabilities; or

(g) A registered nurse who has specialized training or one (1) year of experience in treating persons with mental retardation or developmental disabilities; or

(h) A therapeutic recreation specialist who is a graduate of an accredited program and licensed or registered by the state if required; or

(i) A rehabilitation counselor who is certified by the commission on Rehabilitation Counselor Certification.

Section 2. Scope of Operations. A group home is a facility providing a homelike environment and specialized services in accordance with individualized habilitation plans to not less than four (4) nor more than eight (8) persons with mental retardation or developmental disabilities at a location not adjacent to or part of a mental health or mental retardation institution.

Section 3. Administration and Operations. (1) Licensee. The licensee shall be legally

responsible for the group home and for compliance with federal, state and local laws and regulations pertaining to the operation of the home.

(2) Manager. The group home shall have a manager who is responsible for the full-time operation of the home and for implementing programs as delineated. The manager shall be at least twenty-one (21) years of age and a high school graduate or equivalent.

(3) In the absence of the manager, responsibility shall be delegated to a similarly qualified staff person, to be on site when residents are present for implementation of the program.

(4) Advisory board. Each group home shall have a specific group of individuals who shall establish policies concerning the operation of the group home and the welfare of the individuals residing in the home. Such group of individuals shall be organized as an advisory board and shall meet at least quarterly. The advisory board shall be composed of at least three (3) members and shall include representatives from each of the following groups:

(a) Mental retardation/developmental disability representative from regional mental health/mental retardation board;

(b) Parents or guardians of an individual with mental retardation or developmental disability or a consumer advocate knowledgeable of the needs of group home residents; and

(c) A qualified mental retardation or developmental disability professional.

(5) Policies. The licensee shall develop with the input of the advisory board:

(a) Written outline of the objectives and goals it is striving to achieve. Such outline shall be available for distribution to staff, consumer groups and the interested public.

(b) Written policies which include:

1. Current routine operational procedures;

2. Procedures for the protection of resident's rights;

3. Procedures for the protection of the resident's financial interests; and

4. Procedures for the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 199.335.

(6) The licensee shall incorporate the normalization principle into its objectives and shall implement programs consistent with this principle.

(7) The licensee shall establish job descriptions and qualifications for all group home personnel and shall delegate necessary authority for the daily management of the group home program.

(8) The licensee shall conduct a program evaluation annually.

(9) The way residents are represented to the public shall be appropriate to the purposes and programs of the group home and these terms shall not emphasize mental retardation or deviancy.

(10) The advisory board shall appoint a services committee which shall be responsible for:

(a) All decisions pertaining to resident admissions, transfers and discharges.

(b) Assuring that a comprehensive habilitation plan is established for each resident on an individual basis.

(11) The services committee shall:

(a) Be composed of the manager and two (2) other persons both of whom shall be qualified mental retardation and developmental disability professionals.

(b) Utilize appropriate evaluations in determining eligibility for admission based on areas of comparable need for programming. In such instances where the chronological age span of the program participants exceeds five (5) years for individuals twelve (12) years or younger, ten (10) years for individuals aged thirteen (13) to eighteen (18), and twenty (20) years for individuals eighteen (18) years and older adequate written justification demonstrating the appropriateness of the program must be a part of the individual habilitation plan.

(12) Upon admission, all residents must be free from communicable disease which is reportable to the health department, except a (noninfectious) tuberculosis patient under continuing medical supervision for his or her tuberculosis disease. Within thirty (30) days prior to or within fourteen (14) days after admission, all residents must have a physical examination.

(13) For all individuals who are admitted to the group home, the services committee shall assure that the following information is a part of the resident's record:

(a) Persons to contact in case of emergency;

(b) Next of kin;

(c) Legal competency status and presence or absence of committee; and

(d) Financial resources.

Section 4. Personnel. (1) The group home shall employ an adequate number of supervisory and direct care personnel and establish an on-call procedure to assure that the home has staff present when residents are present.

(2) Volunteers may be utilized but not substituted for the employment of full- or part-time staff.

(3) The group home shall provide an orientation program for all employees to include:

(a) History of retardation;

(b) Normalization principle;

(c) Habilitation planning techniques; and

(d) Basic first aid.

(4) A regular in-service program for the entire staff shall be conducted at least four (4) times a year. Volunteers may participate in such program.

Section 5. Services. (1) Within thirty (30) days after admission to the facility the services committee shall establish a comprehensive habilitation plan for each resident. The resident's habilitation plan shall be reviewed at least every ninety (90) days. In all cases, whether children or adults, the resident or resident's representatives shall participate in the development of the comprehensive habilitation plan.

(a) Such plan shall address the following:

1. Sensorimotor needs;

2. Communicative needs;

3. Social needs;

4. Emotional needs;

5. Educational needs; and

6. Vocational training needs.

(b) The individual habilitation plan shall outline the responsible parties for meeting each of the above listed needs.

(c) Each resident's habilitation plan shall be maintained as an integral part of the resident's records.

(2) Availability of services. The licensee shall assure that a comprehensive array of services is available as needed by each resident of the group home. These services shall be obtained from agencies through a written agreement. The following components shall be available:

(a) Medical services, including emergency medical services and an annual physical examination. For women this examination shall include gynecological services.

(b) Dental services to include at least two (2) visits annually.

(c) Psychological and psychiatric services, to be available as needed according to the resident's habilitation plan.

(d) Physical therapy.

(e) Social services, to include individual, group and family counseling as appropriate, according to individual needs.

(f) Occupational rehabilitative services, to include vocational counseling, planning and training as appropriate, according to individual needs.

(g) Speech therapy and audiology services, as needed.

(h) Public education for school age persons in accordance with Public Law 94-142.

(i) Recreational opportunities to provide the resident with adequate physical fitness and constructive leisure time activities.

Section 6. Physical Standards. The ultimate aim of the environment and design for a group home shall be to foster those skills necessary for maximum independence of the resident and enhance the resident's ability to cope with his or her environment. To this end the following shall be required:

(1) Location.

(a) Group homes can be located in urban, suburban or rural settings, but shall not be isolated from the mainstream of their community, and must be in an area zoned for residential use where applicable. The residence shall have the style and appearance of neighborhood houses.

(b) The group home shall be located within thirty (30) minutes driving time of resident's day program locations, medical and other professional services; and the usual array of essential merchants: groceries, clothing stores, drug stores, etc. The home shall be located within sixty (60) minutes driving time of a hospital.

(c) Group homes shall not be located in house trailers or motor homes.

(2) Resident accommodations.

(a) The residence shall house no less than four (4) nor more than eight (8) residents.

(b) Other than residents, no persons other than the residence's staff and the staff's immediate family may reside in the home.

(c) Bedrooms shall contain no more than two (2) beds with a minimum of sixty (60) square feet in single rooms and eighty (80) square feet in multiple rooms. Beds shall be no less than thirty-three (33) inches wide and six (6) feet long. Bunk beds shall not be used.

(d) Beds occupied by residents shall be placed so that no resident may experience discomfort because of proximity to radiators, heat outlets or exposure to drafts. Each resident shall have

his/her own bed equipped with substantial springs, a clean comfortable mattress, two (2) sheets and a pillow, and such bed covering as required for the resident's health and comfort.

(e) Closet space and drawer space shall be provided for personal belongings.

(f) Residents shall not be housed in rooms, detached buildings or other enclosures which have not been previously inspected and approved for resident use, or in basements not constructed for sleeping quarters. Approved basements must have an outside door.

(g) Appropriate sanitary toilet and bathing facilities shall be conveniently available for resident use with one (1) toilet, lavatory and shower/tub for each six (6) persons residing in the home, including residents and staff.

(h) Adequate ventilation in all resident use areas shall be maintained. Each resident bedroom shall have an exterior screened window which may be opened.

(i) If a private source of water is used the group home shall annually obtain written certification from an appropriate agency that the supply is safe and sanitary. An ample supply of hot and cold running water shall be available at all times.

(j) The group home shall have adequate lighting by natural or artificial means in each hall, stairway, entryway, vestibule, resident area, kitchen, and bathroom.

(k) A heating system which can maintain an even temperature, and is capable of maintaining seventy-two (72) degrees Fahrenheit in resident used areas shall be provided.

(l) Adequate common living areas shall be provided in the group home. This shall include separate living, recreational and eating areas, each large enough to accommodate residents and their visitors.

(m) Adequate laundry facilities shall be available in the home or a conveniently located laundromat may be used.

(n) Telephone service shall be provided to the residents. This service shall be accessible to the residents and shall afford a degree of privacy.

(o) Resident staff living quarters. Resident staff living quarters shall provide privacy. Resident staff includes managers.

(3) General requirements.

(a) The facility shall conform to the life safety code standards adopted by the Fire Marshal's Office relative to group homes.

(b) The group home shall conform to safety requirements pursuant to 815 KAR 10:020, as amended.

(c) The group home shall conform to requirements for plumbing pursuant to 815 KAR 20:010 to 20:019, as amended.

(d) The group home shall conform to requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(e) The group home shall comply with applicable state and local laws relating to sanitation including insect and rodent control.

Section 7. Resident Care and Safety. (1) Dietary.

(a) The group home shall provide at least three (3) meals per day with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. One (1) or more of

these meals may be provided outside the group home depending upon the resident's habilitation plan, but all meals are the financial responsibility of the group home.

(b) Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council and in accordance with resident dietary restrictions.

(c) A written record shall be kept of all foods served.

(d) All food shall be stored off the floor in such a manner as to be protected from dust, insects, rodents, birds, or other forms of contamination. All food showing evidence of spoilage or infestation shall be disposed of immediately upon detection.

(e) Refrigerators shall have a complete seal, be clean, free of odors, and kept at a temperature of forty-five (45) degrees Fahrenheit or below. A thermometer that is easily readable shall be placed in each refrigerator and freezer.

(2) Housekeeping and sanitation.

(a) The facility shall be kept in good repair, clean, uncluttered and sanitary at all times. Floors, walls, ceilings, lighting fixtures, storage areas and equipment shall be kept clean and in good repair. Windows and doors shall be screened.

(b) The facility shall collect and dispose of all garbage, refuse, trash, and litter in compliance with applicable state and local laws and regulations. Garbage containers shall be made of metal or other impervious material, approved by the fire marshal, that will not emit harmful vapors upon exposure to extreme heat, and shall be water tight and rodent proof and shall have tight-fitting lids.

(3) Emergency procedures.

(a) Each group home shall have a fire control and evacuation plan to be practiced at least quarterly with all staff and residents participating.

(b) An on-duty staff member shall be designated at all times to be in charge of evacuation of residents in the event of a fire or other natural disaster.

(c) Phone numbers of a hospital, an ambulance service, the fire department, and a physician for emergencies shall be posted by all telephones in large legible print.

(d) A report on all accidents requiring medical treatment of a resident shall be written and one (1) copy kept on file and made available to the advisory board within seven (7) days of the incident. The original shall be sent to the Cabinet for Human Resources, Division for Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky.

(e) Incident reports for minor accidents shall be written, kept on file and made available upon request.

(4) Medications.

(a) All prescription medications administered to residents shall be noted in writing, with the date, time and dosage, and signed by the person administering the medication. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statement and directions for use.

(b) Medication shall not be administered to any resident except on the written order of a physician. When medication requires

administration by licensed personnel, arrangements shall be made to procure the services of such personnel.

(c) Medications in the home shall be kept in a locked cabinet. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient; the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration.

(d) Self-administration of prescription medications shall be allowed only upon the written instructions of the client's attending physician.

(e) Each individual who requires prescription medication shall receive medical supervision which includes regular evaluation of the individual's response to the medication including appropriate monitoring and laboratory assessment.

(f) The group home shall comply with all federal and state laws and regulations relating to the procurement, storage, dispensing, administration and disposal of drugs subject to the Federal Controlled Substance Act.

(5) Restraints. Physical and chemical restraints shall not be used.

Section 8. Resident Rights. (1) The residents shall be treated in a manner which preserves their feelings of self-worth and human dignity, have visitation rights, the right of privacy and freedom of worship.

(2) A resident's correspondence shall not be opened, except as authorized by the resident or resident's legal guardian or committee.

(3) Residents shall not be physically punished in any way.

(4) Residents shall be appropriately dressed at all times.

(5) Each resident shall have their individual:

- (a) Clean wash cloth and towel;
- (b) Toothbrush;
- (c) Brush and comb;
- (d) Other appropriate toilet articles; and
- (e) Bureau or cupboard for storage of personal belongings.

(6) Residents shall not be denied the privilege of rest periods in their beds.

(7) Residents shall be allowed free movement within the group home and shall have access to all common living areas.

(8) Residents shall have access to the community.

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:081. Operations and services; home health agencies.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides [for the] licensure requirements for the operation of [home health agencies] and [the] services [to be] provided by home health agencies.

[Section 1. Scope. A home health agency is a public agency or private organization, or a subdivision of such an agency or organization which provides intermittent health and health related services, to patients in their place of residence, either singly or in combination as required by a plan of treatment prescribed by a licensed physician.]

Section 1. [2.] Definitions. (1) "Board" means the Commission for Health Economics Control in Kentucky [Health Facilities and Health Services Certificate of Need and Licensure Board].

(2) "Coordination agreements" means agreements to coordinate health care services within the service area of the agency.

(3) "Home health aide" means a person who provides personal care and other related health services, as ordered by the attending physician.

(a) Selection of home health aides shall take into account the ability to:

1. Read and write.

2. Understand and carry out instructions.

3. Record messages.

4. Keep simple records.

(b) Other factors to consider.

1. Emotional and mental maturity; and

2. Interest in and sympathetic attitude toward caring for the sick at home.

(4) "Intermittent nursing service" means service up to a few hours a day, one (1) day or several days per week or month. On occasion, service may be provided more frequently for more time per day up to seven (7) days per week.

(5) "License" means an authorization issued by the Board for the purpose of operating a home health agency and offering home health service.

(6) "Medical social worker" means a person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work and has had at least one (1) year of social work experience in a health care setting. Such person shall be appropriately licensed, if required, by the State Board of Examiners of Social Work of Kentucky.

(7) "Occupational therapist" means a person who is registered by the American Occupational Therapy Association or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Occupational Therapy Association and who is engaged in the required supervised clinical experience period prerequisite to registration by the American Occupational Therapy Association.

(8) "Physical therapist" means a person who is currently licensed by the Kentucky State Board of Physical Therapy.

(9) "Qualified medical social worker" means a person who has a master's degree from a school of social work accredited by the Council on Social Work Education and who has social work experience in a hospital, outpatient clinic, medical rehabilitation, medical care or mental health program. Such person shall be appropriately licensed, if required, by the State Board of Examiners of Social Work of Kentucky.

(10) "Speech pathologist" means a person who:

(a) Meets the education and experience requirements for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or

(b) Meets the educational requirements for

certification and is in the process of accumulating the supervised experience required for certification.

Section 2. Scope. A home health agency is a public agency or private organization, or a subdivision of such an agency or organization which provides intermittent health and health related services, to patients in their place of residence, either singly or in combination as required by a plan of treatment prescribed by a licensed physician.

Section 3. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the home health agency and for compliance with federal, state, and local laws and regulations pertaining to the operation of the service.

(2) The licensee shall establish policies for the administration and operation of the service. The policies shall include:

(a) Acceptance of patients. The policy shall assure that the acceptance of patients is based on medical, nursing and social information provided by the physicians responsible for the patient's care, by institutional personnel and by staff of the home health agency.

(b) Establishment and review of plan of treatment. The policy shall assure that services and items to be provided are specified under a plan of treatment established, signed and regularly reviewed by the physician who is responsible for the care of the patient.

(3) Home health services shall be available to the total population regardless of age, sex, and ethnic background.

(4) The total plan shall be reviewed by the attending physician, in consultation with agency professional personnel at such intervals as the severity of the patient's illness requires, but in any instance, at least once every two (2) months. Verbal authorization to change the plan of treatment shall be reviewed and signed by the physician within seven (7) days after order is issued.

(5) Clinical records. The home health agency shall maintain a clinical record for each patient which covers the services the agency provides directly and those provided through arrangements with another agency; and which contains pertinent past and current medical, nursing, and social information, including the plan of treatment. All records must be confidential.

(6) Physician's original drug orders and changes in orders. The following shall be signed by the physician and incorporated in the patient record maintained by the agency:

(a) Original orders for drugs; and

(b) Changes in orders for the administration of those drugs subject to federal and state controlled substance acts, and other legend drugs, i.e., requiring prescriptions. Verbal authorization by the physician to change drug orders shall be reviewed and signed by the same physician within seven (7) days after order is issued.

(7) Evaluation. The agency shall have procedures which provide for systematic evaluation of its program at least once every two (2) years. The agency staff shall conduct the evaluation. The program evaluation shall include:

(a) Measures to determine whether the policies

established are followed in providing services. These shall include a review of patient records on a sample basis in order to determine that services are being used appropriately and the extent to which the needs of the patients the agency serves are being met both quantitatively and qualitatively;

(b) A mechanism for reviewing overall management aspects of its service to assure economy and efficiency of operations.

(8) Planning. Each agency shall develop and annually review a long range plan which includes:

(a) Assessment of needs for services in the service area of the agency.

(b) Identification of agency's role in meeting those needs.

(c) Staff expansion for a two (2) year period.

(d) Establishment of goals and objectives.

(e) Coordination of volunteer services, community education and community development activities if these services are provided by the agency.

(9) Subdivision operating as home health agency. When a subdivision of an agency (e.g., the home care department of a hospital or the nursing division of a health department) applies for license, the subdivision rather than the parent organization must be licensed as a home health agency and maintain records in such a way that subdivision activities and expenditures attributable to services provided are identifiable. The parent organization shall determine who signs the coordination agreements and other official documents, and receive and disburse funds.

Section 4. Personnel; Supervision and Training. (1) Personnel policies. The agency shall have written policies concerning qualifications, responsibilities, and conditions of employment for each type of personnel (including licensure where this is required by state law). The policies shall be written and available to staff and cover:

(a) Wage scales, hours of work, vacation and sick leave;

(b) A plan for preemployment and periodic medical examination, tuberculin test and/or chest x-ray, and other appropriate tests;

(c) Plans for orientation and for on-the-job training, where necessary;

(d) Periodic evaluation of employee performance; and

(e) Job descriptions for each category of health personnel which are specific and include the type of activity each may carry out.

(2) Agency supervision. The home health agency shall designate a physician or registered nurse to supervise the agency's performance in providing home health services in accordance with the orders of the physician responsible for the care of the patient and under a plan of treatment established by such physician.

(3) Supervision of therapy services. When services of aides or other personnel providing supplementary services are utilized in providing home health services, they shall be trained and supervised by appropriate professional personnel. When such supervision is less than full-time, e.g., for a limited number of hours or days each week, the supervision shall be provided on a planned basis and shall be frequent enough to assure adequate review of individual treatment plans and progress.

(4) Supervision of home health aides. A

registered nurse shall provide direct supervision as necessary and be readily available at other times by telephone. The supervisor shall be constantly evaluating the home health aide in terms of the aide's ability to carry out assigned duties, to relate well to the patient, and to work effectively as a member of a team of health workers. The registered nurse, or appropriate professional staff member, if other services are provided, shall make a supervisory visit to the patient's residence at least every two (2) weeks either when the aide is present to observe and assist, or when the aide is absent to assess relationships and determine whether goals are being met.

(5) Training of home health aides. The home health agency shall determine that home health aides receive or have received a basic training program for home health aides. A home health aide shall be trained in:

- (a) Methods of assisting patients to achieve maximum self-reliance;
- (b) Principles of nutrition and meal preparation;
- (c) The aging process and the emotional problems of illness;
- (d) Procedures for maintaining clean, healthful and pleasant environment;
- (e) Awareness of changes in patient's condition that should be reported;
- (f) Work of the agency and the health team; and
- (g) Ethics, confidentiality and recordkeeping.

Section 5. Provision of Services. (1) The home health agency shall provide intermittent skilled nursing services and other services for restoring, maintaining and promoting health and/or rehabilitation with minimum disruption of daily living.

(2) Services shall range from skilled nursing services to basic health related services to unskilled supportive services.

(3) Services shall be available five (5) days a week with back-up arrangements for weekends and emergency services.

(4) In addition to intermittent skilled nursing services, the agency shall provide home health aide services, medical supplies and equipment services. When a home health agency provides therapeutic and medical social services the following conditions shall be met:

(a) Physical, speech or occupational therapy. When an agency provides or arranges for physical, speech or occupational therapy, service shall be given in accordance with a physician's written orders by or under the supervision of a therapist meeting the respective qualifications as set forth in section 2(7), (8), and (10) of this regulation.

(b) Respiratory therapy. When an agency provides or arranges for respiratory therapy, services shall be given in accordance with a physician's written order, by or under the supervision of a licensed nurse with experience and/or training in the field of respiratory therapy.

(c) Medical social services. When an agency provides or arranges for medical social services, services shall be given in accordance with a physician's written order by a qualified medical social worker or a medical social worker meeting the qualifications set out in Section 2 of this regulation.

(5) Home health aide services. Visits of the

home health aide for providing personal care and other related health services must be ordered by the physician and included in a plan of treatment approved by the physician.

(6) Services arranged for with another licensed provider. When a home health agency makes arrangements for the provision of home health services by another agency which is a licensed provider of services, there shall be a written agreement which:

(a) Designates the services which are being arranged for. Services provided are to be within the scope and limitations set forth in the plan of treatment. Such services may be altered only upon the specific orders of the initiating home health agency issued as a result of a change made by the physician in the patient's plan of treatment;

(b) Describes how the contracted personnel, where applicable, are to be supervised; and

(c) Provides for the recording of the progress notes and observations of the contracted personnel in the home health agency records for purposes of planning and evaluating patient care.

(7) Services arranged for with a nonlicensed provider. When a home health agency arranges for services with an agency that is not a licensed provider of services, a contract shall be written. The contract shall:

(a) Designate the services which are being arranged for;

(b) Specify the period of time the contract is to be in effect and how frequently it is to be reviewed;

(c) Describe how the contracted personnel are to be supervised;

(d) State that home health services provided to the patient are in accordance with a plan established by the patient's physician in conjunction with home health agency staff and, when appropriate, others involved in the patient's care. Services provided shall be within the scope and limitations set forth in the plan and shall not be altered in type, scope, or duration by the secondary agency; and

(e) Assure that personnel and services contracted for meet the same requirements as those specified for home health agency personnel and services, including personnel qualifications, functions, supervision, orientation and in-service training.

(8) Service agreements with other health care facilities. Coordination agreements as defined in Section 2 of this regulation shall be developed with the major health care providers in the service area including: hospitals, skilled, intermediate and personal care facilities and family care homes.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

**CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)**

902 KAR 20:091. Facilities specifications, operation and services; community mental health-mental retardation center.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides [for the] licensure requirements for the operation, services, and facility specifications of community mental health/mental retardation

centers.

[Section 1. Scope of Operations and Services. A community mental health/mental retardation center provides a comprehensive range of accessible and coordinated mental health/mental retardation services, including direct services and indirect mental health and mental retardation services, to the population of a designated regional service area as required by KRS 210.370 to 210.480.]

Section 1. [2.] Definitions. (1) "Clinical psychologist" means a clinical psychologist certified or licensed pursuant to KRS Chapter 319.

(2) "Licensee" means the governing body legally responsible for the community mental health center.

(3) "Psychiatric nurse" means a registered nurse who:

(a) Has a master's of science degree in nursing with a specialty in psychiatric or mental health nursing; or

(b) Is a graduate of a four (4) year educational program with a bachelor of science degree in nursing and a minimum of one (1) year of experience in a mental health setting; or

(c) Is a graduate of a three (3) year program with two (2) years of experience in a mental health setting; or

(d) Is a graduate of a two (2) year educational program with an associate degree in nursing with three (3) years of experience in a mental health setting.

(4) "Qualified social worker" means a social worker with a master's degree from an accredited school of social work who is licensed or exempt from licensure pursuant to KRS Chapter 335.

(5) "Center" means the community mental health/mental retardation center.

(6) "Designated regional service area" means the geographical area to be served by the community mental health/mental retardation center as approved by the Secretary of the Cabinet for Human Resources.

Section 2. Scope of Operation and Services. A community mental health/mental retardation center provides a comprehensive range of accessible and coordinated mental health/mental retardation services, including direct services and indirect mental health and mental retardation services, to the population of a designated regional service area as required by KRS 210.370 to 210.480.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the center, for the establishment of administrative policies, and for compliance with federal, state, and local laws and regulations pertaining to the operation of the center.

(b) In order to obtain a license or to renew a license to operate a center the licensee shall comply with the requirements of this regulation and the requirements of all statutes and regulations applicable to the services and programs offered by the center (e.g., alcohol and drug abuse programs licensed pursuant to 902 KAR 3:005 to 902 KAR 3:200).

(2) Executive director. The licensee shall designate an executive director, qualified by training and experience, who shall be

responsible for the total program of the center and its affiliates in accordance with the center's written policies and for evaluation of the program as it relates to the client's needs.

(3) Policies. The licensee shall establish written policies for the administration and operation of the center which shall be available to staff and which shall include:

(a) A description of the organizational structure which describes responsibilities, functions and interrelations of all units and lines of administrative and clinical authority;

(b) Appropriate methods and procedures for the storage, dispensing and administering of drugs and biologicals;

(c) Grievance procedures for clients;

(d) Confidentiality and use of client records in accordance with federal, state, and local statutes and regulations; and

(e) Personnel policies including:

1. Job descriptions and qualifications for each type of personnel;

2. Wage scales, hours of work, vacation and sick leave;

3. Plans for orientation of all personnel to the policies and objectives of the center and for on-the-job training, where necessary; and

4. Periodic evaluation of employee performance.

(4) Medical records. A medical record shall be maintained for each individual receiving services.

(a) All entries shall be current, dated, signed, and indexed according to the service received.

(b) All medical records shall be retained for a minimum of five (5) years or, in the case of a minor, three (3) years after the client reaches the age of majority, whichever is longer.

(c) All client records shall be kept in locked files and treated as confidential. Information contained in client records shall be disclosed only to authorized persons.

(d) Each medical record shall contain: an identification sheet; information on the purpose for seeking service, a history of findings and treatments rendered, screening information pertaining to the problem, staff notes on services provided, pertinent medical, psychiatric and social information; disposition; assigned status; assigned therapists; and a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.

(5) Personnel. Minimum staffing requirements for a community mental health center shall include the following full-time personnel:

(a) A program director who is a psychiatrist, certified or licensed psychologist, psychiatric nurse or a qualified social worker. The program director may also be the executive director;

(b) A board-certified or board-eligible psychiatrist who shall be responsible for treatment planning and provide psychiatric service as indicated by client needs, and shall supervise and coordinate all planning functions in the continual development and improvement of the psychiatric service elements (may be more than one (1) psychiatrist if hours worked are equivalent to a full-time position);

(c) A clinical psychologist who shall provide evaluation and screening services for client as well as individual or group therapy;

(d) A psychiatric nurse who shall provide or supervise nursing service for psychiatric care;

(e) A qualified social worker who shall

provide social services as required; and

(f) A person who shall assure that medical records are maintained and that information is immediately retrievable.

Section 4. Services. (1) The center shall provide services in the designated regional service area directly or through contract.

(2) Direct services. The center shall provide a sufficiently wide range of treatments to meet the clients' needs such as: individual, family, or group therapy, play therapy, behavior modification, or chemotherapy.

(3) Treatment plan. Each client receiving direct treatment under the auspices of a community mental health center shall have an individual treatment plan signed by a physician. The treatment plan shall establish a diagnosis and indicate services required, as well as short-term and long-term goals.

(4) The center shall provide:

(a) A therapeutic program for those persons who require less than twenty-four (24) hour a day care, but more than outpatient care (i.e., partial hospitalization, or day care). A psychiatrist shall be present on a regularly scheduled basis to provide consultant services to staff.

(b) Inpatient services through affiliation with a licensed community hospital for persons requiring full-time inpatient care. Any center which does not have an affiliation contract in effect but documents a good faith effort to enter into such a contract shall be considered to be in compliance with this requirement.

(c) Outpatient services on a regularly scheduled basis with arrangements made for nonscheduled visits during times of increased stress or crisis. The outpatient services shall provide diagnosis and evaluation of psychiatric problems and referrals to other services or agencies as indicated by the client's needs.

(d) Emergency services for the immediate evaluation and care of persons in crisis situations on a twenty-four (24) hour a day, seven (7) day a week basis. All components of the emergency service shall be coordinated into a unified program so that clients receiving emergency services can be readily transferred to other services of the center as client needs dictate.

(e) Consultation and education services for individuals and various community agencies and groups to increase the visibility, identifiability, and accessibility of the center and to promote mental health through the distribution of relevant mental health knowledge.

(5) The center shall have a utilization and review plan for the evaluation of the service needs of each client. The need for continuing any service element for each individual shall be evaluated with sufficient frequency to ensure that proper arrangements have been made for discharge, for transfer to other elements of service, or referral to another service provider when appropriate.

(6) Medications. Treatments involving medications and chemotherapy shall be administered under the direction of a licensed physician and:

(a) Records of all medication and chemotherapy used in treatment shall be in the staff notes on a special medications chart in the medical record;

(b) A copy of the prescriptions, with a limit

of no more than three (3) refills, shall be kept in the medical record;

(c) Blood and other laboratory tests and examinations shall be performed in accordance with accepted medical practice on all individuals receiving medications prescribed or administered by the center;

(d) Drug supplies shall be stored under proper sanitary, temperature, light and moisture conditions;

(e) All medications kept by the center shall be properly labeled;

(f) Medications shall be stored in originally received containers unless transferred to other containers by a pharmacist or other person licensed to do so; and

(g) All medications kept in the center shall be kept in a locked cabinet. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. Nursing medication cabinets shall be kept locked and access shall be restricted to designated medication nurses.

Section 5. Facility Specifications. (1) The facilities housing community mental health/mental retardation centers shall be general purpose buildings of safe and substantial construction and shall be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation. The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended; and

(b) Requirements for making buildings and facilities accessible to and usable by the physically handicapped, pursuant to KRS 198B.260 and regulations promulgated thereunder.

(2) Prior to occupancy, the facility shall have final approval from appropriate agencies.

(3) All facilities shall be currently approved by the Fire Marshal's Office in accordance with the Life Safety Code, before relicensure is granted by the licensure agency.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES

Office of Inspector General

(Proposed Amendment)

902 KAR 20:101. Facility specifications; ambulatory surgical center.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides [for the] licensure requirements for [the] facility specifications for [the] construction, alteration and maintenance of ambulatory surgical centers.

Section 1. Definitions. (1) "Board" means the Commission for Health Economics Control in Kentucky [Health Facilities and Health Services Certificate of Need and Licensure Board].

[(2)] "Certificate of need" means an authorization by the Board to proceed with any acquisition, initiation, construction or expansion of a health care facility pursuant to KRS Chapter 216B.]

[(2)] [(3)] "License" means an authorization issued by the Board for the purpose of operating an ambulatory surgical center and offering ambulatory surgical services.

[(3)] [(4)] "Licensure agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

Section 2. Preparation and Approval of Plans and Specifications. After receiving a certificate of need from the Board, the following procedures shall be followed:

(1) Before construction is begun for the erection of new buildings or alterations to existing buildings or any change in facilities, the licensee or applicant shall submit plans in the detail specified in Section 3 to the licensure agency for approval.

(2) All architectural, mechanical and electrical drawings shall bear either the seal of an architect registered in the Commonwealth of Kentucky or the seal of a professional engineer registered in the Commonwealth of Kentucky, or both.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) All such plans and specifications shall be approved by the licensure agency prior to commencement of construction of new buildings or alterations of existing buildings.

(5) Plans and specifications in specific detail as required by the Kentucky Building Code shall be submitted together with architectural and/or engineering stamps as required by KRS Chapters 322 and 323, to the Department of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. All such plans and specifications shall be approved by the Department of Housing, Buildings and Construction, and appropriate local building permits shall be obtained prior to commencement of construction.

Section 3. Submission of Plans and Specifications. (1) First stage; schematic plans. Single line drawings of each floor shall show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room shall be noted. Drawings shall include the typical patient room layouts (scaled one-fourth (1/4) inch equals one (1) foot) with dimensions noted. The proposed roads and walks, service and entrance courts, parking and orientation shall be shown in a plot plan.

(2) Second stage; preliminary plans.

(a) Architectural: plans of basement and floors.

(b) Outline specifications.

1. General description of the construction, including interior finishes, types and locations of acoustical material, and special floor covering;

2. Description of the air-conditioning, heating, and ventilation systems and their

controls, duct and piping systems; and dietary, laundry, sterilizing and other special equipment;

3. General description of electrical service including voltage, number of feeders, and whether feeders are overhead or underground.

(3) Third stage; contract documents.

(a) Working drawings. Working drawings shall be complete and adequate for bid, contract, and construction purposes. Drawings shall be prepared for each of the following branches of the work: architectural, structural, mechanical, and electrical. They shall include the following:

1. Architectural drawings.

a. Approach plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new building structures, roadways, walks, and parking areas;

b. Plan of each basement, floor and roof;

c. Elevations of each facade;

d. Sections through building;

e. Required scale and full-size details;

f. Schedule of doors, windows, and room finishes;

g. Equipment; location of all fixed equipment. Layout of typical and special rooms indicating all fixed equipment and major items of movable equipment. Equipment not included in contract shall be so indicated;

h. Conveying systems; details of construction, machine and control spaces necessary, size and type of equipment, and utility requirements, for the following: dumbwaiters: electric, hand, hydraulic; elevators: freight, passenger, patient; loading dock devices; pneumatic tube systems.

2. Structural drawings.

a. Plans for foundations, floors, roofs, and all intermediate levels with sizes, sections, and the relative location of the various structural members;

b. Dimensions of special openings;

c. Details of all special connections, assemblies, and expansion joints.

3. Mechanical drawings.

a. Heating, steam piping, and air-conditioning systems; radiators and steam heated equipment, such as sterilizers, warmers, and steam tables; heating and steam mains and branches with pipe sizes; diagram of heating and steam risers with pipe sizes; sizes, types, and capacities of boilers, furnaces, hot water heaters with stokers, oil burners, or gas burners; pumps, tanks, boiler breeching, and piping and boiler room accessories; air-conditioning systems with required equipment, water and refrigerant piping, and ducts; supply and exhaust ventilation systems with heating/cooling connections and piping; air quantities for all room supply and exhaust ventilating duct openings.

b. Plumbing, drainage, and standpipe systems; size and elevation of: street sewer, house sewer, house drains, street water main, and water service into the building; location and size of soil, waste, and water service with connections to house drains, clean-outs, fixtures, and equipment; size and location of hot, cold and circulating branches, and risers from the service entrance, and tanks; riser diagram of all plumbing stacks with vents, water risers, and fixture connections; gas, oxygen, and vacuum systems; standpipe and sprinkler systems where required; all fixtures and equipment that require water and drain connections.

4. Electrical drawings.

a. Electric service entrance with switches and feeders to the public service feeders, characteristics of the light and power current, transformers and their connections if located in the building;

b. Location of main switchboard, power panels, light panels, and equipment. Diagram of feeder and conduits with schedule of feeder breakers or switches;

c. Light outlets, receptacles, switches, power outlets, and circuits;

d. Telephone layout showing service entrance, telephone switchboard, strip boxes, telephone outlets, and branch conduits;

e. Nurses' call systems with outlets for beds, duty stations, door signal light, annunciators, and wiring diagrams;

f. Fire alarm system with stations, signal devices, control board, and wiring diagrams;

g. Emergency electrical system with outlets, transfer switch, sources of supply, feeders, and circuits;

h. All other electrically operated systems and equipment.

(b) Specifications. Specifications shall supplement the drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment and shall include:

1. Cover or title sheet;

2. Index;

3. Sections describing materials and workmanship in detail for each class of work.

(c) Access to the work. Representatives of the appropriate state agencies shall have access at all reasonable times to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

Section 4. Compliance with Building Codes, Ordinances and Regulations. (1) This section may be administered independently from other sections of this regulation.

(2) General. Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(3) The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended.

(b) Requirements for plumbing pursuant to 815 KAR 20:010 through 190, as amended.

(c) Requirements for air contaminants for incinerators pursuant to 401 KAR 59:020 and 401 KAR 61:010.

(d) Requirements for elevators pursuant to 803 KAR 4:010.

(e) Requirements for making buildings and facilities accessible to and usable by the physically handicapped, pursuant to KRS 198B.260 and regulations promulgated thereunder.

(f) Requirements for radiation protection in x-ray and gamma ray installations pursuant to 902 KAR Chapter 100.

(4) Prior to occupancy, the facility shall have final approval from appropriate agencies.

(5) All facilities shall be currently approved by the Fire Marshal's Office in accordance with the Life Safety Code, before relicensure is granted by the licensure agency.

Section 5. General Facility Requirements and Special Conditions. (1) All ambulatory surgical center facilities shall contain at least all the elements described herein, or the narrative program shall indicate the manner in which the needed services are to be provided and identify appropriate modifications or deletions in space and equipment requirements. Each element provided in the ambulatory surgical center facility must meet the construction requirements outlined herein as a minimum, with the understanding that in many instances the elements will need to be expanded to fulfill the program requirements.

(2) A narrative program for each project shall be provided by the sponsor which describes the functional space requirements, staffing patterns, departmental relationships, and other basic information relating to the fulfillment of the objectives of the facility.

(3) The extent (number and types of rooms) of the diagnostic, clinical, and administrative facilities to be provided shall be determined by the services contemplated and the estimated patient load as described in the narrative program.

(4) The planning of ambulatory surgical center facilities shall provide for the privacy and dignity of the patient during interview, examination, and treatment.

(5) Facilities shall be available and accessible to the public, staff, and patients who may be physically handicapped. Special attention shall be given to ramps, drinking fountain height, mirrors, and other items deemed necessary for the physically handicapped.

(6) The facility shall have adequate administrative, public, and staff facilities (e.g., offices, lobby, toilet facilities) to accommodate the needs of the public, patients, and staff without interfering with the provision of medical care services.

Section 6. Clinical Facilities. (1) General purpose examination room(s) to be used for medical examinations shall have a minimum clear floor area of eighty (80) square feet, excluding such other spaces as vestibule, toilet, closet, and work counter (whether fixed or movable). Arrangement shall permit at least thirty (30) inches of clear space at each side and at foot of examination table. Provide lavatory or sink with hand-washing facility and counter or shelf space for writing.

(2) Facilities for charting and for clinical records (nurses' station(s)). Provide counter space, temporary storage, and communication device; these may be located in each examination room and each treatment room.

(3) Drug distribution station. If the facility is to maintain a medication preparation room for the proper storage of drugs and biologicals, it shall be so located as to be under the nursing staff's visual control. It shall contain a work counter, refrigerator, and locked storage for drugs and biologicals.

Section 7. Medical Records Unit. This unit shall include:

(1) Active record storage area;

(2) Record review and dictating room;

(3) Work area for sorting, recording, or microfilming;

(4) Inactive record storage area. (May be omitted if microfilming is used.)

Section 8. Diagnostic Facilities. (1) Radiology suite. If the facility provides radiology directly it shall provide equipment for diagnostic purposes but may also include therapeutic equipment. The suite shall contain:

- (a) Radiographic room(s);
- (b) Film processing facilities;
- (c) Viewing and administration area(s);
- (d) Film storage facilities;
- (e) Toilet room which is directly accessible from each fluoroscopy room without entering the general corridor area;
- (f) Dressing area(s) with convenient access to public toilets.

(2) Laboratory facilities. Facilities shall be provided directly within the ambulatory surgical center or through a contract arrangement with a nearby hospital or laboratory service for hematology, clinical chemistry, urinalysis, cytology, and bacteriology. If these facilities are provided through such a contract, then at least the following shall be provided:

- (a) Laboratory work counter(s) with sink, gas and electric service;
- (b) Lavatory(ies) with hand-washing facility;
- (c) Storage cabinet(s) or closet(s);
- (d) Specimen collection facilities. Urine collection rooms shall be equipped with a water closet and lavatory. Blood collection facilities shall have space for a chair and work counter.

Section 9. Janitor's Closet(s). This room shall contain a sink and storage for housekeeping supplies and equipment. Provide at least one (1) janitor's closet per floor.

Section 10. Surgical Suite. (1) General. The suite shall be located to prevent through-traffic.

(2) Operating rooms. Each room shall have a minimum clear floor area of 240 square feet, with a minimum dimension of fifteen (15) feet.

(3) Recovery facilities. A separate room with charting space, medication storage and preparation space, and clinical sink is required.

(4) Service areas in each surgical suite. The size of each service area will depend on the surgical workload and shall include:

- (a) Surgical supervisor station;
- (b) Sterilizing facilities; near operating room with high-speed autoclave;
- (c) Facilities for storage and preparation of medication;
- (d) Scrub-up facilities; adjacent to operating rooms;
- (e) Soiled workroom. Shall contain counter, clinical sink, waste receptacles, and soiled linen receptacles;
- (f) Storage for sterile and unsterile supplies (may be in clean workroom);
- (g) Anesthesia workroom for cleaning and storage of equipment;
- (h) Storage room for anesthetic agents;
- (i) Nitrous oxide and oxygen facilities (provide storage room if these services are not piped in);
- (j) Clean workroom for storage and assembly of supplies; shall contain counter and sink;
- (k) Equipment storage room for surgical and monitoring equipment;
- (l) Janitor's closet. Floor receptor or service sink and storage for housekeeping supplies and equipment;
- (m) Clothing change areas, lockers, and toilet rooms for doctors, nurses, orderlies, and other

personnel;

(n) Holding area (for patients) in facilities with two (2) or more operating rooms;

(o) Stretcher alcove.

Section 11. Central Medical and Surgical Supply Department. The following areas shall be separated from each other:

(1) Receiving and cleanup room. Space for cleaning equipment and disposing or processing of unclean articles shall be provided.

(2) Clean workroom. This room shall be divided into work space, clean storage area, sterilizing facilities, and storage area for sterile supplies.

(3) Unsterile supply storage area. May be located in an area other than this department.

Section 12. Engineering Service and Equipment Areas. The following shall be provided:

(1) Room(s) for boilers, mechanical equipment, and electrical equipment.

(2) Refuse storage room. This shall be located convenient to service entrance.

(3) Waste processing services:

(a) Provide space and facilities for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, or removal, or by a combination of these techniques.

(b) If provided, the incinerator shall be in a separate room, in a designated area within the boiler room, or placed outdoors.

Section 13. Details and Finishes. All details and finishes shall meet the following requirements:

(1) Details.

(a) Corridors inside surgical suite shall be eight (8) feet minimum width.

(b) All doors to toilets which may be used by patients shall be equipped with hardware which will permit access in any emergency.

(c) The minimum width of doors for patient access to examination rooms shall be three (3) feet. Minimum width of doors to all rooms needing access for beds or stretchers shall be three (3) feet and eight (8) inches.

(d) Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use of wheelchairs and carts.

(e) The location and arrangement of hand-washing facilities shall permit their proper use and operation. Particular care shall be given to the clearances required for blade-type operating handles.

(f) Paper towel dispensers and waste receptacles shall be provided at all lavatories and sinks used for hand washing.

(g) Ceiling heights:

1. Boiler rooms: Not less than two (2) feet and six (6) inches above the main boiler header and connecting piping.

2. Radiographic and other rooms containing ceiling mounted equipment and including those having ceiling mounted surgical light fixtures shall have a height of not less than nine (9) feet.

3. All other rooms shall have ceilings not less than eight (8) feet high except that ceilings in corridors, storage rooms, toilet rooms, and other minor rooms may be not less than seven (7) feet and eight (8) inches. Tracks, rails, pipes, etc., located in the path of normal traffic, shall be not less than six

(6) feet and eight (8) inches above the floor.

(h) Rooms containing heat producing equipment (such as boiler or heater rooms) shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature ten (10) degrees Fahrenheit above the ambient room temperature.

(2) Finishes.

(a) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. In all areas subject to frequent wet cleaning, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet, as shower and bath areas and certain work areas, shall have a nonslip surface.

(b) Wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth, moisture resistant, and easily cleaned.

(c) Wall bases in areas used for surgical procedures, and other areas subject to frequent wet cleaning shall be made integral and coved with the floor, tightly sealed within the wall, and constructed without voids that can harbor insects.

(d) Floor and wall penetrations by pipes, ducts, conduits, etc., shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(e) Acoustical ceilings shall be provided in corridors, multipurpose rooms, and waiting areas.

(f) Ceilings in operating suites shall be washable.

Section 14. Construction. Foundations shall rest on natural solid bearing if a satisfactory soil is available at reasonable depths. Proper soil-bearing values shall be established in accordance with recognized standards. If solid bearing is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement, except that one (1) story buildings may rest on a fill designed by a soils engineer. When engineered fill is used, site preparation and placement of fill shall be done under the direct full-time supervision of the soils engineer. The soils engineer shall issue a final report on the grading operation and a certification of compliance with the job specifications. All footings shall extend to a depth not less than one (1) foot below the estimated maximum frost line.

Section 15. Elevators. (1) General. Elevators shall be required where examination or treatment rooms or diagnostic services are located on other than the main entrance floor.

(2) Cars and platforms. Cars shall have a minimum inside floor dimension of not less than five (5) feet. The car door shall have a clear opening of not less than three (3) feet.

(3) Leveling. Elevators shall have automatic leveling of the two (2) way automatic maintaining type with accuracy within plus or minus one-half (1/2) inch.

Section 16. Mechanical Requirements. (1) General. Prior to completion of the contract and final acceptance of the facility, the architect and/or engineer shall obtain from the contractor certification that all mechanical systems have been tested and that the installation and

performance of these systems conform to the requirements of the plans and specifications.

(2) Steam and hot water systems.

(a) Boiler accessories. Boiler feed pumps, condensate return pumps, fuel oil pumps, and circulating pumps shall be connected and installed to provide standby service when any pump breaks down.

(b) Valves. Supply and return mains and risers of space heating and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return end.

(3) Air-conditioning, heating and ventilating systems.

(a) Temperatures and humidities:

1. The systems shall be designed to provide the temperatures and humidities shown below:

Area Designation	Temp. F.	RH
Operating	70-76*	30-60**
Recovery	75	30-60

*Variable range required

**If combustible anesthetics are used the range for humidity shall be 50-60.

2. For all other occupied areas, a minimum temperature of seventy-five (75) degrees Fahrenheit shall be provided at winter design conditions.

(b) Ventilation system details. All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown in Table 1, Section 18 of this regulation, shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates if they are required to meet design conditions.

1. Outdoor ventilation air intakes, other than for individual room units, shall be located as far away as practicable but not less than twenty-five (25) feet from the exhaust from any ventilating system or combustion equipment. The bottom of outdoor intakes serving central air systems shall be located as high as possible but not less than eight (8) feet above the ground level or, if installed through the roof, three (3) feet above roof level.

2. The ventilation systems shall be designed and balanced to provide the general pressure relationship to adjacent areas as shown in Table 1, Section 18 of this regulation.

3. All air supplied to sensitive areas such as operating rooms shall be delivered at or near the ceiling of the area served, and all air exhausted from the area shall be removed near floor level. At least two (2) exhaust outlets shall be used in all operating rooms. Exhaust outlets shall be located not less than three (3) inches above the floor.

4. Room supply air inlets, recirculation, and exhaust air outlets installed in nonsensitive areas shall be located not less than three (3) inches above the floor.

5. Filters.

a. The ventilation systems serving sensitive areas such as operating rooms, recovery rooms, and laboratory sterile rooms, shall be equipped with a minimum of two (2) filter beds. Filter bed No. 1 shall be located upstream of the conditioning equipment and shall have a minimum efficiency of thirty (30) percent. Filter bed No. 2 shall be located downstream of the

conditioning equipment and shall have a minimum efficiency of ninety (90) percent.

b. Central systems serving other than sensitive areas shall be provided with a filter or filters rated at a minimum of twenty-five (25) percent efficiency.

c. The above filter efficiencies shall be warranted by the manufacturer and shall be based on the National Bureau of Standards Dust Spot Test Method with Atmospheric Dust.

6. Acoustical lining materials shall not be used in the interior of duct systems serving sensitive areas such as operating rooms and recovery rooms.

7. Cold-air ducts shall be insulated wherever necessary to maintain the efficiency of the system or to minimize condensation problems.

8. The ventilation system for anesthesia storage rooms shall conform to the requirements of NFPA Standard No. 56A as adopted by the State Fire Marshal's Office for ambulatory surgical center facilities.

9. Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment and reasonable temperatures in the rooms and in adjoining areas.

(4) Plumbing fixtures.

(a) The material used for plumbing fixtures shall be of nonabsorptive acid-resistant material.

(b) Lavatories and sinks required in patient care areas shall have the water supply spout mounted so that its discharge point is a minimum distance of five (5) inches above the rim of the fixture. All fixtures used by medical and nursing staff shall be trimmed with valves which can be operated without the use of hands. Where blade handles are used for this purpose they shall not exceed four and one-half (4 1/2) inches in length, except that handles on scrub sinks and clinical sinks shall be not less than six (6) inches long.

(c) Hot, cold, and chilled water piping, and waste piping on which condensation may occur shall be insulated. Insulation of cold and chilled water lines shall include an exterior vapor barrier.

(d) Hot water distribution systems shall be arranged to provide hot water at each fixture at all times.

(5) Hot water heaters and tanks.

(a) The hot water heating equipment shall have a sufficient capacity to supply water at the temperature and amounts indicated below:

	Use
	Clinical
Gal/hr/bed	6 1/2
Temp. F.	125

(b) Storage tank(s) shall be provided and shall be fabricated of noncorrosive metal or lined with noncorrosive material.

(6) Drainage systems.

(a) Drain lines from sinks in which acid wastes may be poured shall be fabricated from an acid-resistant material.

(b) Piping over operating and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage of necessary overhead piping systems.

(c) Floor drains shall not be installed in operating rooms.

(d) Building sewers shall discharge into a

community sewage system. Where such a system is not available, a facility providing sewage treatment which conforms to applicable local and state regulations is required.

(7) Nonflammable medical gas systems. Nonflammable medical gas system installations shall be in accordance with the requirements of NFPA Standard No. 56F as adopted by the State Fire Marshal's Office for ambulatory surgical center facilities.

Section 17. Electrical Requirements. (1) General. All material including equipment, conductors, controls, and signaling devices shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the plans. All materials shall be listed as complying with applicable standards of Underwriters' Laboratories, Inc., or other similarly established standards. The essential electrical systems shall be designed in accordance with NFPA Publication Nos. 70 and 76-A as they relate to hospital facilities.

(2) Switchboard and power panels. All breakers and switches shall be indexed.

(3) Lighting.

(a) All spaces occupied by people, machinery, and equipment within buildings, and the approaches thereto, and parking lots shall have electric lighting.

(b) Operating rooms shall have general lighting for the room in addition to local lighting provided by special lighting units at the surgical tables. Each special lighting unit for local lighting at tables shall be connected to an independent circuit.

(4) Receptacles (convenience outlets). Anesthetizing locations: Each operating room shall have at least three (3) receptacles of the interchangeable type as defined in NFPA Standard No. 56A as adopted by the State Fire Marshal's Office for ambulatory surgical center facilities. In locations where mobile x-ray is used, an additional receptacle, distinctively marked for x-ray use, shall be fed by an independent ungrounded circuit.

(5) Equipment installation in special areas.

(a) Installation in hazardous areas. In areas where flammable anesthetic agents are used, such as operating and anesthesia induction rooms, and rooms for storage of flammable gases, all electrical equipment and devices including receptacles, wiring and conductive flooring installations shall comply with NFPA Standard No. 56A as adopted by the State Fire Marshal's Office for ambulatory surgical center facilities.

(b) X-ray film illuminator. Viewing panels shall be installed in each operating room and in the x-ray viewing room.

(6) Nurses' calling system. An emergency nurses' calling station shall be provided for nurses' use in each operating room and recovery room.

(7) Emergency electric service.

(a) General. To provide electricity during an interruption of the normal electric supply that could affect the medical care, treatment, or safety of the occupants, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power.

(b) Sources. The source of this emergency electric service shall be as follows:

1. An emergency generating set, when the normal service is supplied by one (1) or more central station transmission lines.

2. An emergency generating set or a central station transmission line, when the normal electric supply is generated on the premises.

(c) Emergency generating set. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system. Exception: A system of prime movers which are ordinarily used to operate the emergency generator(s) will be permitted provided that the number and arrangement of the prime movers is such that when one (1) of them is out of service (due to breakdown or for routine maintenance), the remaining prime mover(s) can operate the required emergency generator(s) and provided that the connection time requirements described in paragraph (e) of this subsection are met. The emergency generator set shall be of sufficient kilowatt capacity to supply all lighting and power load demands of the emergency system. The power factor rating of the generator shall be not less than eighty (80) percent.

(d) Emergency electrical connections. Emergency electrical service shall be provided to circuits as follows:

1. Lighting.

a. Exitways and all necessary ways of approach thereto including exit signs and exit direction signs, exterior of exits, exit doorways, stairways, and corridors.

b. Surgical room operating lights.

c. Laboratory, recovery room, nursing station and medication preparation areas.

d. Generator set location, switch-gear location, and boiler room.

2. Equipment essential to life safety and for protection of important equipment or vital materials.

a. Nurses' calling system;

b. Alarm system including fire alarm actuated at manual stations, water flow alarm devices of sprinkler system if electrically operated, fire detection systems, paging or speaker systems if intended for issuing instructions during emergency conditions, and alarms required for nonflammable medical gas systems, if installed;

c. Fire pump, if installed;

d. Pump for central suction system;

e. Sewage or sump lift pump, if installed;

f. Receptacles for blood bank refrigerator;

g. Receptacles in operating and recovery rooms except those for x-ray;

h. One (1) elevator, where elevators are used to transport patients to operating rooms;

i. Equipment such as burners and pumps necessary for operation of one (1) or more boilers and their necessary auxiliaries and controls, required for heating of operating rooms, recovery rooms and sterilization;

j. Ventilation of operating and recovery rooms;

k. Equipment necessary for maintaining telephone service.

3. Heating. Where electricity is the only source of power normally used for space heating, the emergency service shall provide for heating of operating and recovery room.

(e) Details. The emergency electrical system shall be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency and connected within ten (10) seconds

through one (1) or more primary automatic transfer switches to all emergency lighting, all alarms, blood banks, nurses' call, equipment necessary for maintaining telephone service, pump for central suction system, and receptacles in operating and recovery rooms. All other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Where fuel is normally stored on the site, the storage capacity shall be sufficient for twenty-four (24) hour operation. Where fuel is normally piped underground to the site from a utility distribution system, storage facilities on the site will not be required.

Section 18. Tables. Table 1 - Pressure Relationships and Ventilation of Certain Areas. Table 2 - Lighting Levels for Certain Areas.

Table 1. Pressure Relationships and Ventilation of Certain Areas

Area Designation	Pressure Relationship to Adjacent Areas	All Supply Air From Outdoors	Minimum Air Changes of Outdoor Air per Hour
Operating Room	P	—	5
Recovery	O	—	2
Treatment Room	O	—	2
X-ray, Fluoroscopy Room	N	—	2
X-ray, Treatment Room	O	—	2
Soiled Workroom	N	—	2
Clean workroom	P	—	2
Janitor's closet	N	—	—
Sterilizer Equipment Room	N	—	—
Laboratory, General	N	—	2
Anesthesia Storage	O	—	—
Central Medical and Surgical Supply: Soiled or Decontamination Room	N	—	2
Clean Workroom	P	—	2
Unsterile Supply Storage	O	—	2

P = Positive N = Negative O = Equal — = Optional

Table 1. Continued

Area Designation	Minimum Total Air Changes Per Hour	All Air Exhausted Directly to Outdoors
Operating Room	12	—
Recovery	6	Yes
Treatment Room	6	—
X-ray, Fluoroscopy Room	6	Yes
X-ray, Treatment Room	6	—
Soiled Workroom	4	—
Clean Workroom	4	—
Janitor's Closet	10	Yes
Sterilizer Equipment Room	10	Yes
Laboratory, General	6	—
Anesthesia Storage	8	Yes

Central Medical and Surgical Supply:		
Soiled or Decontamination Room	4	--
Clean Workroom	4	--
Unsterile Supply		
<u>Storage</u>	2	--
-- = Optional		

Table 2. Lighting Levels for Certain Areas

Area	Foot-candles*
Administration and lobby areas, day	50
Corridors and interior ramps	20
Doorways	10
Examination and treatment room General	50
Examining Table	100
Exit stairways and landings	5
Janitor's closet	15
Nurses' station, general	50
Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Stairways other than exits	30
Utility room, general	20
<u>Utility room, work counter</u>	50

*Minimum on task at anytime.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New

survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:145. Operations and services; rural health clinics.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 authorize the Kentucky Cabinet for Human Resources [Certificate of Need and Licensure Board] to regulate health facilities and health services. This regulation sets forth the requirements for the operation and services of rural health clinics.

Section 1. Scope of Operations and Services. A rural health clinic is a health facility located in a rural area that has a shortage of health manpower as provided by the Rural Health Clinic Services Act of 1977 (Public Law 95-210). Rural health clinics provide a broad range of diagnostic and treatment services, on an outpatient basis for a variety of health conditions. The clinic does not have to be freestanding, but may be an integral and subordinate part of a licensed health facility, or health service.

Section 2. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the clinic and for compliance with federal, state, and local laws and regulations pertaining to the operation of the clinic.

(2) The rural health clinic shall be under the medical direction of a physician.

(3) The licensee shall establish written policies, lines of authority, and designate the person who will be principally responsible for the daily operation of the clinic.

(4) The licensee shall develop patient care policies with the advice of a group of professional personnel that include one (1) or more physicians and one (1) or more advanced registered nurse practitioners. At least one (1) member shall not be a member of the rural health

clinic staff. The policies shall include:

(a) A description of the services the rural health clinic provides directly and those provided through agreement;

(b) Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, and the maintenance of health records;

(c) Procedures to be followed in the storage, handling, and administration of drugs and biologicals; and

(d) Procedures for review and evaluation of the services provided by the clinic at least annually.

(5) Personnel. The rural health clinic shall have a staff that includes at least one (1) physician and at least one (1) advanced registered nurse practitioner. The clinic shall employ such other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

(a) The physician shall:

1. Be responsible for all medical aspects of the center and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. In addition, the physician shall provide medical direction, supervision, and consultation to the staff;

2. In conjunction with the advanced registered nurse practitioner(s), participate in developing, executing, and periodically reviewing the rural health clinic's written policies and services;

3. Periodically review the rural health clinic's patient records, provide medical orders, and provide medical care services to patients of the rural health clinic; and

4. Be present for consultation weekly, and be immediately available (within one (1) hour) through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

(b) The advanced registered nurse practitioner shall:

1. Participate in the development, execution and periodic review of the written policies governing the services the rural health clinic provides;

2. Participate with the physician in periodic review of patient health records;

3. Provide services in accordance with rural health clinic policies, established protocols, the Nurse Practice Act (KRS Chapter 314), and with regulations promulgated thereunder:

a. Arrange for, or refer patients to needed services that cannot be provided at the rural health clinic;

b. Assure that adequate patient health records are maintained and transferred when patients are referred.

(6) The rural health clinic shall have linkage agreements or arrangements with each of the following:

(a) Inpatient hospital care;

(b) Physician services in a hospital, patient's home, or long term care facility;

(c) Additional and specialized diagnostic and laboratory services that are not available at the rural health clinic;

(d) Home health agency;

(e) Local health department;

(f) Emergency medical services; and

(g) Pharmacy services.

(7) The rural health clinic shall maintain a clinical record system in accordance with

written policies and procedures. A member of the professional staff shall be designated to be responsible for maintaining the records and for insuring that the records are systematically organized, readily accessible and accurately documented.

(8) For each patient receiving health care services, the rural health clinic shall maintain a record that includes, as applicable:

(a) Identification and social data, evidence of consent forms, pertinent medical history, assessment of the health status and health care needs of the patient, and a brief summary of the episode, disposition, and instructions to the patient for each patient contact;

(b) Reports of physical examinations, diagnostic and laboratory test results, and consultative findings;

(c) All orders, reports of treatments rendered and medications given and other pertinent information necessary to monitor the patient's progress;

(d) Signatures of the physician or other health care professionals on each order written or treatment provided.

(9) The rural health clinic shall maintain the confidentiality of medical record information and provide safeguards against loss, destruction, or unauthorized use. Written policies and procedures shall govern the use and removal of records from the clinic and the condition for release of information.

(10) Medical records shall be retained for a minimum of five (5) years or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

(11) The rural health clinic shall carry out or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

(a) The utilization of clinic services including at least the number of patients served and the volume of services;

(b) A representative sample of both active and closed clinical records;

(c) The rural health clinic's health care policies.

Section 3. Services. (1) The rural health clinic shall develop and maintain written protocols (i.e. standing orders, rules of practice, and medical directives) which apply to services provided by the center and which explicitly direct the step-by-step collection of subjective and objective data from the patient. The protocols shall further direct data analysis, direct explicit medical action depending upon the data collected and include rationale for each decision made. The protocols shall be signed by the staff physician.

(2) The rural health clinic staff shall furnish those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

(3) The rural health clinic shall provide basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:

(a) Chemical examinations of urine by stick or

tablet methods or both (including urine ketones);
 (b) Microscopic examinations of urine sediment;
 (c) Hemoglobin or hematocrit;
 (d) Blood sugar;
 (e) Gram stain;
 (f) Examination of stool specimens for occult blood;

(g) Pregnancy tests;
 (h) Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and
 (i) Test for pinworms.

(4) The rural health clinic shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and have available the drugs and biologicals commonly used in lifesaving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

(5) The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services will be available in the clinic, and where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled hours of operation.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state

and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES Office of Inspector General (Proposed Amendment)

902 KAR 20:150. Alternative birth centers.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides for the licensure requirements for the operation and services and facility specifications of alternative birth centers.

[Section 1. Scope of Operations and Services. Alternative birth centers are establishments with permanent facilities which provide perinatal care to low risk childbearing women. An alternative birth center provides a homelike environment for pregnancy and childbirth including prenatal, labor, delivery, and postpartum care related to medically uncomplicated pregnancies.]

Section 1. [2.] Definitions. (1) "Center" means alternative birth center.

(2) "Low risk" means a normal uncomplicated prenatal course as determined by adequate prenatal care and prospects for a normal uncomplicated birth including criteria recognized by the American College of Obstetrics and Gynecologists in their Standards for Obstetric-Gynecologic Services, as amended.

Section 2. Scope of Operations and Services. Alternative birth centers are establishments with permanent facilities which provide prenatal care to low risk childbearing women. An alternative birth center provides a homelike environment for pregnancy and childbirth including prenatal, labor, delivery, and postpartum care related to medically uncomplicated pregnancies.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be responsible for the management and operation of the center and for compliance with federal, state and local laws and regulations pertaining to its operation.

(b) The licensee shall appoint an administrator whose qualifications, responsibilities, authority and accountability shall be defined in writing.

(2) Administrator.

(a) The administrator shall be responsible for the daily management and operation of the center.

(b) In the absence of the administrator, responsibility shall be delegated to a similarly qualified staff person.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity and reflect the program of the center. Such reports shall include financial records and reports, personnel records, inspection reports and other pertinent reports made in the regular course of business.

(b) Licensure inspection reports and plans of correction shall be made available at the center to the public upon request.

(4) Policies.

(a) Administrative policies. The licensee shall adopt written administrative policies covering all aspects of the center's operation, to include:

1. A description of the organizational structure, staffing and allocation of responsibility and accountability;

2. A description of referral linkages with physician(s), inpatient facilities and other providers;

3. Policies and procedures for the guidance and control of personnel performances;

4. A description of services included in the center's program;

5. A description of the administrative and patient care records and reports;

6. A policy approved by the medical director to specify emergency medical procedures;

7. A policy approved by the medical director which fully identifies the criteria which would exclude a pregnant woman or mother from the center's program;

8. A policy approved by the medical director which fully identifies the criteria which would preclude management of newborns at the center.

(b) Patients' rights policies. The licensee shall adopt written policies regarding the rights and responsibilities of patients. These patients' rights policies shall assure that each patient:

1. Is informed of these rights and of all rules and regulations governing patient conduct and responsibilities including a procedure for handling patient grievances;

2. Is fully informed of the services and treatment offered at the center and of related charges, separately identifying those charges not covered by third party payor arrangements;

3. Is encouraged and assisted to understand and exercise her patient rights and to this end may voice grievances and recommend changes in policies and services. Upon the patient's request the grievances and recommendations will be conveyed within a reasonable time to an appropriate decision making level within the organization which has the authority to take corrective action;

4. Is assured confidential treatment of her

records and afforded the opportunity to approve or refuse their release to any individual not involved in her care except as required by law or third party payment contract;

5. Is treated with consideration, respect and full recognition of her dignity and individuality including privacy in treatment.

(5) Personnel.

(a) The licensee shall establish personnel policies for the center. These policies shall be reviewed, revised and approved on an annual basis.

(b) There shall be an individual personnel record for each person employed by the center which shall include the following:

1. Preemployment and annual physical examination to include a tuberculin skin test or chest x-ray and rubella antibody titer. No employee with direct patient contact having an infectious disease shall appear at work until the infectious disease can no longer be transmitted;

2. Evidence of education, training and experience of the individual along with a copy of the current license or certification credentials if applicable; and

3. Evidence that employees have received orientation to the center's personnel policies and emergency medical procedures during the first week of employment.

(6) Staffing.

(a) The center shall have a staff that includes a medical director, at least one (1) nurse-midwife and at least one (1) registered nurse. In centers where an obstetrician provides perinatal care, a nurse-midwife is not required. The center shall employ such other staff or ancillary personnel that are necessary to provide the services essential to the center's operation. Staffing schedules, time worked schedules and on-call records shall be maintained and available in the center at all times. These records shall be maintained for three (3) years.

1. Medical director. The center shall have a medical director who is a licensed physician with experience in obstetrics and newborn care. If the medical director is not a practicing board-eligible or board-certified obstetrician, the center shall have a written agreement with a board-eligible or board-certified obstetrician and pediatrician for consultation, referral, and, if necessary, hospital admission. If the medical director is a practicing obstetrician or a practicing board-eligible or board-certified obstetrician, the center shall have a written agreement with a board-eligible or board-certified pediatrician. Either the medical director, consultant obstetrician or pediatrician shall have admitting privileges in a local hospital which offers obstetrics services.

2. Nurse-midwife. Nurse-midwife services shall be provided within the respective scope of practice pursuant to KRS Chapter 314 and regulations promulgated thereunder. There shall be written protocols developed by the nurse-midwife and medical director and approved by the medical director. These protocols shall be reviewed, revised, signed and dated on an annual basis.

3. Nursing services shall be provided by licensed nurses within their respective scope of practice pursuant to KRS Chapter 314 and any regulations promulgated thereunder. Nurses shall

have at least one (1) year of experience in perinatal care.

(b) In-service training. The licensee shall provide ongoing in-service training programs for all personnel relating to their respective job activities. These programs shall emphasize professional competence and the human relationship necessary for effective health care.

(7) Medical records. The center shall maintain a medical record for pregnant women and mothers to include at least the following:

(a) Prenatal history to include any physical or health problems;

(b) Past medical, menstrual, obstetric, contraceptive and immunization history including progress of current pregnancy;

(c) Complete initial physical examination including blood pressure, weight, height, examination of skin, eyes, teeth, throat, neck, thyroid, breasts, heart, lungs, abdomen, height of fundus, fetal position and auscultation, pelvic adequacy, including rectum and size of uterus, fetal heart sounds, edema, and determination of gestational age;

(d) Initial laboratory tests to include hemoglobin or hematocrit and white blood count, urinalysis for sugar and protein determination, pap smear, serologic tests for syphilis and rubella antibody titer, blood type, Rh factors and screen for Rh and irregular antibodies, when indicated, tuberculin skin test and chest x-ray or evidence of physician follow-up when skin test is positive, sickle cell test when indicated and gonorrhea culture;

(e) Nutritional assessment;

(f) High risk identification and referral;

(g) Records of subsequent visits with recorded weight, blood pressure, urinalysis for protein, sugar, height of fundus, abdominal findings on palpation; rate and location of fetal heart tones, estimation of gestational age, edema, unusual signs, symptoms or quickening, third trimester hemoglobin or hematocrit, repeat venereal disease test, Rh and irregular antibody screen for Rh negative unsensitized women; and repeat antibody titers at twenty-six (26) weeks, thirty-two (32) weeks, and thirty-six (36) weeks;

(h) Parturient initial record of intercurrent problems, physical examination, temperature, pulse, respiration, blood pressure, head, heart, lungs, abdomen for lie and presentation position, fundal height and engagement, reevaluation of pelvic adequacy, recording of time of ruptured membranes, record of hemoglobin or hematocrit and urine for protein and sugar;

(i) Progress of labor, monitoring of contractions and fetal heart rate, dilatation, effacement, station, urinary output, medications, complications and action taken;

(j) Delivery time, newborn's Apgar score, episiotomy, placenta delivery time, medications given, abnormalities, and any complications along with actions taken;

(k) Puerperium-time records for at least six (6) hours, including postpartum blood pressure, respirations, pulse, temperature, urine output, report of breasts and breastfeeding status, legs for thrombophlebitis, hemoglobin or hematocrit, appropriate RhD immune globulin administration at the center; record of follow-up assessment within seventy-two (72) hours; and

(l) A four (4) to six (6) week follow-up examination to include record of weight, blood pressure, breast, abdominal, pelvic including rectal examination, appropriate cervico vaginal

cytologic study, hematocrit or hemoglobin, and urinalysis.

(8) A health report of the newborn shall be maintained and include the following:

(a) Duration of ruptured membranes;

(b) Maternal antenatal blood serology, rubella titer, blood type, Rh factors and when indicated, a Coombs Test;

(c) Complete description of the progress of labor and delivery (including complications, if any);

(d) Condition of the newborn infant including the Apgar score, resuscitation, time of sustained respirations, (where indicated, details of physical abnormalities, pathological states observed and treatments given before transfer to appropriate nursery);

(e) Any abnormalities of placenta and cord vessels;

(f) Date and hour of birth, birth weight, sex, and period of gestation;

(g) Written verification of eye prophylaxis pursuant to 902 KAR 4:020 (or documentation of refusal based on religious belief with parent signature);

(h) Report of initial physical examination including any abnormalities;

(i) Discharge-physical examination including weight, head circumference and body length unless previously recorded, recommendations and designation of responsible physician for care immediately upon discharge and thereafter; and

(j) Progress notes describing first and subsequent feedings type, time of first voiding, stools passage, body temperature, Vitamin K prophylaxis, blood metabolic screen for phenylketonuria and hypothyroidism, galactosemia (documentation of parental refusal for religious reasons including parent signature in record), notations of abnormal respiratory rate, dyspnea, color, cyanosis, periodic pallor, lethargy, vomiting, condition of eyes, umbilical cord and other relevant factors as indicated by the condition of the newborn.

(9) In the event emergency hospital care is needed during the pregnancy, delivery, or postdelivery period, the pregnant woman or mother's record or a complete copy of the record must accompany the pregnant woman or mother or newborn at the time of transfer.

(10) All health records shall be safeguarded against loss, destruction or unauthorized use.

(11) Patient records of mother and newborn shall be maintained at the center for five (5) years or in case of a minor mother, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(12) An up-to-date register of all deliveries shall be maintained and contain the following information:

(a) Infant's full name, sex, date, time of birth and weight;

(b) Mother's full name, including maiden name, address, birthplace and age at time of this birth;

(c) Father's full name, birthplace, and age at time of this birth, if provided; and

(d) Full name of attending physician or nurse-midwife.

(13) A certificate of birth shall be filed in accordance with the provisions of KRS Chapter 213 and regulations promulgated thereunder.

(14) Linkage agreements. The center shall have linkages through written agreements with

providers of other levels of care which may be medically indicated to supplement the services available in the center. These linkages shall include:

- (a) Hospital(s);
- (b) A board-eligible or board-certified obstetrician and pediatrician unless the medical director is a practicing board-eligible or board-certified obstetrician;
- (c) A board-eligible or board-certified pediatrician if the medical director is a practicing obstetrician or a practicing board-eligible or board-certified obstetrician;
- (d) Registered pharmacist; and
- (e) Licensed emergency medical transportation services with appropriate equipment for transporting pregnant woman/mother and infant.

Section 4. Provision of Services. (1) Medical services.

(a) Perinatal services shall be available twenty-four (24) hours a day, seven (7) days a week on an on-call basis.

(b) There shall be sufficient staff coverage for all aspects of the center in keeping with the size and scope of the operation.

(2) Nursing services.

(a) A nurse-midwife or physician and a registered nurse shall be on duty at all times when a pregnant woman is laboring in the center. A registered nurse shall be present at all times when a woman or mother and newborn are at the center. The registered nurse shall have at least one (1) year of perinatal experience.

(b) The center shall insure that phones are answered twenty-four (24) hours a day, seven (7) days a week, in order to alert the on-call staff. Telephone numbers of emergency services and staff shall be posted by all telephones in large legible print.

(3) Laboratory services.

(a) The center shall provide laboratory services either directly, through arrangement with a laboratory in a licensed hospital or a medical laboratory licensed pursuant to KRS Chapter 333. If laboratory services are provided directly, the laboratory shall be licensed pursuant to KRS Chapter 333.

(b) If services are provided through arrangement with other providers, a copy of the signed and dated report shall be included in the patient's medical record. Laboratory tests conducted at the center shall be entered in the patient's record, dated, and signed by the individual performing the test.

(4) Radiology services. Radiology services shall be provided directly or through arrangement. The radiology service and personnel shall have a current license or registration pursuant to KRS 211.842 and 211.890 and any regulations promulgated thereunder, as applicable. A signed and dated report of any radiology examination shall be entered into the pregnant woman's or mother's record.

(5) Drug distribution.

(a) There shall be a list approved by the medical director of all drugs and biologicals including intravenous solutions which are retained for use in the center.

(b) The list of drugs and biologicals shall include the identity of center staff authorized to administer the drugs, biologicals and intravenous solutions. Oxytocic drugs shall not be used to induce or augment labor.

(c) Drugs and biologicals shall be

administered only by persons legally authorized.

(d) Drugs and biologicals shall be stored in a locked cabinet and, when refrigeration is necessary, they shall be stored in a locked container in a refrigerator.

Section 5. Compliance with Building Codes, Ordinances and Regulations. (1) Nothing stated herein shall relieve the licensee from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdiction.

(2) The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended;

(b) Requirements for plumbing pursuant to 815 KAR 20:010 through 191, as amended;

(c) Requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(3) The facility shall be currently approved by the Fire Marshal's office in accordance with the Life Safety Code before licensing or relicensure is granted by the licensing agency.

(4) All facilities shall receive any necessary approval from appropriate agencies prior to occupancy and licensure.

Section 6. Clinical Facilities. (1) Examination room(s). At least one (1) examination room shall be provided. Each room shall have a minimum clear floor area of eighty (80) square feet excluding such other spaces as vestibule, toilet, closet, and work counter. Arrangement shall permit at least thirty (30) inches of clear space at each side and at the foot of examination table. A lavatory or sink with hand-washing facility and counter or shelf space for writing shall be provided.

(2) Birthing room(s). There shall be at least two (2) birthing rooms each with a minimum clear floor area of 225 square feet exclusive of fixed and movable cabinets and shelves and with a minimum dimension of fifteen (15) feet.

(3) Each birthing room shall be equipped with the following:

(a) Adequate lighting, including a spotlight suitable for use during delivery;

(b) Infant warmer with radiant heat source;

(c) Resuscitation equipment for mother and infant;

(d) Oxygen with a selection of mask sizes;

(e) Suction equipment for mother and newborn;

(f) Intubation equipment for mother and newborn; and

(g) Wall clock with a second hand.

(4) The service areas for the birthing room shall include:

(a) Sterilizing facilities with high speed autoclave(s) conveniently located to serve all birthing rooms;

(b) Scrub facilities provided near the birthing room entrance;

(c) A clean holding room for storage and distribution of clean supply materials; and

(d) A soiled holding room as part of a system for the collection and disposal of soiled materials.

(5) Formula room. The following shall be provided unless commercially-prepared formula is used:

(a) Work counter with built-in sink with

gooseneck-type spout and knee or foot control;

- (b) Lavatory;
- (c) Hot plate;
- (d) Refrigerator;
- (e) Sterilizer (autoclave); and
- (f) Bottle washer.

(6) Physical and sanitary environment.

(a) The condition of the physical plant and the overall center environment shall be maintained in such a manner that the safety and well being of patients, personnel and visitors are assured.

(b) A person or persons shall be designated as responsible for each of the following areas:

- 1. Plant maintenance;
- 2. Housekeeping; and
- 3. Laundry operations (if applicable).

(c) The center shall develop written infection control policies and procedures to minimize and control possibilities of infection which shall include:

- 1. The sterilization of supplies;
- 2. Policies for the protection of patients from employees who have a communicable disease; and
- 3. Infection control measures including birth room cleaning and waste disposal.

(d) The center building, equipment and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. Written housekeeping procedures shall be established for cleaning of all areas and copies shall be made available to personnel.

2. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe sanitary condition.

3. Hazardous cleaning solutions, compounds and substances shall be labeled, stored in proper containers and kept separate from other cleaning materials.

(e) The center shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection:

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers and stored in an area designated exclusively for this purpose.

(f) The center shall have an emergency source of lighting for exam, labor, and birthing room(s) to protect the health and safety of the pregnant woman or mother in the event the normal supply is interrupted.

(g) The center shall establish a written policy for the handling and disposal of waste materials. Any incinerator used shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010, as applicable.

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort,

Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:155. Air ambulance services.

RELATES TO: KRS 216B.010 to 216B.130 [131], 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040(2)], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health

Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides for the licensure requirements for the operation and services of air ambulances.

Section 1. Definitions. (1) "Board" means the Commission for Health Economics Control in Kentucky [Health Facilities and Health Services Certificate of Need and Licensure Board].

[(2) "Cabinet" means the Cabinet for Human Resources.]

[(2) [(3)] "Emergency care air ambulance transportation" means health care transportation provided on an emergency or scheduled basis in any rotary or fixed wing aircraft to persons who are sick, injured or otherwise incapacitated and who may require immediate stabilization and continued medical response and intervention during transit or upon arrival at the patient's destination to safeguard the patient's life or physical health.

[(3) [(4)] "FAA" means the Federal Aviation Administration.

[(4) [(5)] "Licensure agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

Section 2. Licensure. No person shall provide emergency care air ambulance services without having first obtained a license from the board.

(1) The license shall designate the Kentucky geographic area to be served.

(2) The licensee shall designate the number of aircraft to be operated and provide the licensure agency with identifying information (e.g., type of aircraft, serial number, aircraft identification number, etc.). Additional aircraft shall not be operated until the licensure agency has been notified and has verified that the aircraft meets the requirements of this regulation. This shall not preclude the service from utilizing a similarly equipped back-up aircraft on a temporary basis without notifying the licensure agency when the primary aircraft is out of service for maintenance.

(3) The licensee shall inform the licensure agency of its arrangements for back-up vehicles prior to initial licensure and of any changes which occur after initial licensure.

Section 3. Standards for the Operation of Emergency Care Air Ambulance Transportation Services. The air ambulance service shall comply with the following standards:

(1) The operator of the air ambulance service shall have a valid Air Taxi/Commercial Operators Certificate pursuant to FAA Regulation Title 14 CFR Part 135.

(2) There shall be a means of securing the litter and attached patient.

(3) Personnel.

(a) The air ambulance service shall be under the medical direction of a licensed physician who is qualified to provide emergency services for the patient being transported and whose responsibilities shall include:

1. Advising the medical flight attendant of precautions to be taken prior to and during the flight;

2. Developing staffing requirements for all air ambulance transports based on the patient's condition;

3. Assuring that adequate supplies and equipment are on board to care for the patient being transferred;

4. Developing patient care protocols;

5. Monitoring and evaluating the quality of patient care;

6. Providing individual consultation to air ambulance personnel; and

7. Developing in-service training program for all medical flight attendants.

(b) While transporting a patient each air ambulance shall be staffed by not less than one (1) pilot with a valid commercial operator's certificate and one (1) medical flight attendant per patient. The attendant(s) shall remain with the patient(s) at all times during transport.

(c) Each medical flight attendant shall be certified as an emergency medical technician by the Cabinet for Human Resources pursuant to 902 KAR 13:010 through 13:090 or shall be a licensed physician or registered nurse.

(d) An air ambulance service operating as an advanced life support unit shall meet the applicable requirements of 201 KAR 9:101 through 9:171.

(4) Equipment. Each air ambulance shall provide emergency care equipment as required by 902 KAR 20:115, Section 3(3) for ground ambulances, stored on board or in modular prepackaged form so as to be available for rapid loading and easy access aboard the aircraft at the time of response to a call.

(5) Communications. The vehicle shall have radio capability to communicate ground-to-air, air-to-air and air-to-ground. This shall include two (2) way radio communication equipment compatible with the statewide ambulance to hospital emergency radio communications system with capability to communicate with ground personnel to properly coordinate the landing, physicians directing patient management and primary medical responders on the ground who may be caring for the patient.

(6) Records and reports. All air ambulance services shall keep accurate records and reports concerning the transportation of each emergency patient which are maintained at the headquarters of the licensee and are available for periodic review as deemed necessary by the board. The service shall provide a full record to the receiving facility of any treatment administered at the pickup location or during transit. Required records and reports shall include:

(a) The Kentucky Emergency Medical Service Run Report Form. Completed forms shall be forwarded to the Cabinet for Human Resources in accordance with submission dates established by that cabinet; and

(b) Employee records including a resume of each employee's training and experience and evidence of current certification.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at

the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES Office of Inspector General (Proposed Amendment)

902 KAR 20:170. Facility specifications; psychiatric hospitals.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides the licensure

requirements for the structural specifications and physical plant requirements for new construction, alteration and maintenance of psychiatric hospital facilities. Psychiatric hospital facilities licensed prior to the effective date of this regulation shall meet the facility specifications in force on the date of their most recent licensure inspection.

Section 1. Definitions. (1) "Board" means the Commission for Health Economics Control in Kentucky [Health Facilities and Health Services Certificate of Need and Licensure Board].

[(2) "Certificate of need" means an authorization by the board to proceed to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service pursuant to KRS Chapter 216B.]

(2) [(3)] "License" means an authorization issued by the board for the purpose of operating a psychiatric hospital facility.

(3) [(4)] "Licensure agency" means the Division for Licensing and Regulation in the office of the Inspector General, Cabinet for Human Resources.

Section 2. Preparation and Approval of Plans and Specifications. After receiving a certificate of need from the board, plans and specifications shall be submitted to the licensure agency and required approvals shall be obtained pursuant to the requirements of 902 KAR 20:009, Sections 2 and 3.

Section 3. Compliance with Building Codes, Ordinances and Regulations. (1) This section of this regulation may be administered independently from other sections of this regulation.

(2) Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(3) The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements of the Kentucky Building Code pursuant to 815 KAR 7:010 through 815 KAR 7:060;

(b) Requirements for safety pursuant to 815 KAR 10:020, as amended;

(c) Requirements for plumbing pursuant to 815 KAR 20:010 through 20:191, as amended;

(d) Requirements for air contaminants for incinerators pursuant to 401 KAR 59:020 and 401 KAR 61:010;

(e) Requirements for elevators pursuant to 815 KAR 4:010;

(f) Requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder;

(g) Review of x-ray installation, construction and modification plans pursuant to 902 KAR 100:160;

(h) Food Service Establishment Act (KRS 219.011 to 219.081) and State Food Service Code (902 KAR 45:005), as amended; and

(i) Requirements for boilers pursuant to 815 KAR 15:010 through 815 KAR 15:070.

(4) Prior to occupancy the facility shall have final approval from appropriate agencies.

(5) All facilities shall be currently approved by the Fire Marshal's office before relicensure is granted by the licensing agency.

Section 4. Facility Requirements and Special Conditions. (1) A copy of the narrative program as submitted in the certificate of need application for each project shall be provided to the licensure agency by the sponsor which describes the functional space requirements, staffing patterns, departmental relationships, and other basic information relating to the fulfillment of the objectives of the facility.

(2) The extent (number and types of rooms) of the diagnostic, clinical, and administrative facilities to be provided shall be determined by the services to be provided and the estimated patient load as described in the narrative program.

Section 5. Nursing Unit. (1) Patient room. Each patient room shall meet the following requirements:

(a) Minimum floor area of 100 square feet in one (1) bed rooms and eighty (80) square feet per patient in multibed rooms with a maximum of two (2) patients per room.

(b) Patient toilet rooms. A toilet room shall be directly accessible from each patient room without going through the general corridor. One (1) toilet room may serve two (2) patient rooms.

(c) Lavatory. A lavatory shall be provided in each patient room. If the patient room is served by its own private toilet room the lavatory may be located in the toilet room.

(d) Window. Sill height shall not be higher than three (3) feet above the floor. Windows in psychiatric units shall be of security type or a type that can only be opened by keys or tools that are under the control of staff. Degree of security required shall be as determined by the program. Operation of the sash shall be restricted to inhibit possible tendency for escape or suicide. Where glass fragments may create a hazard, safety glazing and/or other appropriate security features shall be incorporated.

(e) If a nurses' call system is included, provisions shall be made to permit removal of call buttons and/or use of blank plates as appropriate.

(f) Visual privacy shall be provided to each patient as needed which isolates patients from one another but not from observation by staff.

(g) No patient room shall be located more than 120 feet from the nurses' station.

(h) No room shall be used as a patient room where the access is through another patient's room.

(2) Service areas. Each nursing unit shall include:

(a) A separate space for occupational therapy at the rate of fifteen (15) square feet per patient and a minimum area of 400 square feet. This space may be outside the nursing unit.

(b) A minimum of two (2) separate social spaces, one (1) appropriate for noisy activities and the other for quiet activities shall be provided. The combined area shall not be less than thirty (30) square feet per patient or not less than 120 square feet for each of the two (2) spaces, whichever is greater. This space may be shared by dining activities and may be outside of the nursing unit.

(c) Storage for patients' belongings.

(d) Bathing facilities. Bathtubs or showers shall be provided at the rate of one (1) for each four (4) beds which are not individually served. At least one (1) bathing facility shall

have space for a wheelchair patient with an assisting attendant.

(e) Nurses' station for charting, communications, and storage for supplies with a sink equipped for hand-washing.

(f) Clean workroom or clean holding area. There shall be a clean workroom with a work counter, hand-washing and storage facilities or a clean holding room which is part of a central system for storage and distribution of clean and sterile supplies.

(g) Soiled workroom or soiled holding room. There shall be a soiled workroom with a clinical sink or equivalent flushing rim fixture, sink equipped for hand-washing, work counter, waste receptacle, and linen receptacle or a soiled holding room which is a part of a central system for collection and disposal of soiled materials.

(h) Medicine area. Provision shall be made for twenty-four (24) hour distribution of medicine to patients. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system. If a medicine preparation room or unit is used it shall be under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for biologicals and drugs. If a medicine dispensing unit is used it may be located at the nurses' station, in the clean workroom, or in an alcove or other space under direct control of the nursing or pharmacy staff. The controlled substances locker must have a double lock.

(i) Clean linen storage in an enclosed space (may be a designated area within the clean workroom). If a closed cart system is used, storage may be in an alcove.

(3) Seclusion room(s). A seclusion room shall be provided for patients requiring security and protection from either himself or others. The room shall be located in a manner affording direct observation of the patient by the nursing staff. It shall be a single room and be constructed to minimize the patient's hiding, escape, injury or suicide. There shall be a minimum of one (1) seclusion room for every twenty-four (24) beds. The seclusion room(s) is intended for short term occupancies by patients who may have become violent or suicidal. Therefore, special fixtures, hardware, etc., including ground fault interrupters for electrical circuits and tamper proof screws, shall be used. Doors shall have provisions for staff observation while maintaining privacy from public and other patients.

Section 6. Outpatient Services. (1) Outpatient department. If outpatient services are provided outpatient facilities shall provide for the privacy and dignity of the patient during interview, examination, and treatment. Facilities shall be located so that outpatients do not transverse areas being used by inpatients.

Section 7. Laboratory Facilities. Facilities for laboratory services shall be provided directly within the psychiatric hospital or through a contract with a hospital or laboratory service for hematology, clinical chemistry, urinalysis, cytology, and bacteriology. If the psychiatric hospital has a full medical laboratory providing these services it shall comply with the applicable requirements of 902 KAR 20:009 concerning laboratories. If these services are provided through a contract, the

following shall be provided in the psychiatric hospital:

- (1) Laboratory work counter(s) with sink, gas and electric service;
- (2) Lavatory(ies) with hand-washing facility;
- (3) Storage cabinet(s) or closet(s); and
- (4) Specimen collection facilities. Urine collection rooms shall be equipped with a water closet and lavatory. Blood collection facilities shall have space for a chair and work counter.

Section 8. Pharmacy or Drug Room. There shall be adequate facilities for the safe storage and handling of pharmaceuticals including double locking of controlled substances and refrigeration for biologicals and drugs which require refrigeration.

Section 9. Other Medical Services. If the psychiatric hospital provides radiologic, physical therapy, surgical services or other medical services not addressed by this regulation the facility shall comply with the applicable requirements of 902 KAR 20:009, Facility specifications, hospitals.

Section 10. Dietary Department. Food service facilities shall be designed and equipped for sanitary storage, processing, and handling of food. The facilities shall include refrigerated storage and dry storage to accommodate a three (3) day minimum supply and dining space for ambulatory patients, staff and visitors.

Section 11. Administrative and Public Areas. The facility shall have adequate administrative, public, and staff facilities (e.g., offices, lobby, toilet facilities) to accommodate the needs of the public, patients, and staff without interfering with the provision of medical care services.

Section 12. Medical Records Unit. This unit shall include adequate space for record storage, record review and dictating, record sorting and recording.

Section 13. Laundry. (1) The arrangement of facilities and equipment shall assure an orderly work flow with a minimum of cross traffic that might mix clean and soiled operations.

(2) If linen is to be processed in the hospital, the following shall be provided:

(a) Soiled linen receiving, holding, and sorting room with hand-washing facilities;

(b) Laundry processing room with commercial-type equipment which can process seven (7) days of linen needs within a regularly scheduled work week. Hand-washing facilities shall be provided;

(c) Clean linen storage, inspection, and issuing room or area; and

(d) Cart storage and cart sanitizing facilities.

(3) If linen is to be processed off the hospital site there shall be a soiled linen holding room with a hand-washing facility conveniently accessible and a room or rooms for receiving, inspection and storage of clean linen.

Section 14. Waste Processing Services. Space and facilities shall be provided for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal, or by a

combination of these techniques.

Section 15. Details and Finishes. All details and finishes shall meet the following requirements:

(1) Doors to patient toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of two (2) feet and ten (10) inches.

(2) All doors to patient-room toilets and patient-room bathrooms shall swing outward or be equipped with hardware that will permit access in an emergency.

(3) Grab bars provided at patients' toilets, showers, or tubs shall have one and one-half (1 1/2) inches clearance to walls and shall be of sufficient strength and anchorage to sustain a concentrated load of 250 pounds for a period of five (5) minutes.

(4) Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated shall not be located directly over patient bed areas unless special provisions are made to minimize such noise.

(5) Rooms containing heat-producing equipment such as boiler rooms, laundries, and food preparation areas shall be insulated and ventilated to prevent any floor surface from exceeding a temperature of ten (10) degrees Fahrenheit above the ambient room temperature.

(6) Noise reduction criteria. Partition, floor, and ceiling construction in patient areas shall comply with Section 19, Table 1 of this regulation.

(7) Floors that are subject to traffic while wet, such as shower and bath areas shall have a nonslip finish.

Section 16. Elevators. (1) Number of elevators. All hospitals having patients' facilities, such as patient rooms, dining rooms or recreation areas, or diagnostic or therapy areas, located other than on the main entrance floor shall have elevators.

(a) At least one (1) hospital-type elevator shall be installed where one (1) to fifty-nine (59) patient beds are located on any floor other than the main entrance floor.

(b) At least two (2) hospital-type elevators shall be installed where sixty (60) to 200 patient beds are located on floors other than the main entrance floor, or where the major inpatient services are located on a floor other than those containing patient beds.

(c) At least three (3) hospital-type elevators shall be installed where 201 to 350 patient beds are located on floors other than the main entrance floor, or where the inpatient services are located on a floor other than those containing patient beds.

(d) For hospitals with more than 350 beds the number of elevators shall be determined from a study of the hospital plan and the estimated vertical transportation requirements.

(2) Cars and platforms. Cars of hospital elevators shall have inside dimensions that will accommodate a hospital bed and attendant and shall be at least five (5) feet wide by seven (7) feet and six (6) inches deep. The car door shall have a minimum clear opening of not less than three (3) feet and eight (8) inches.

Section 17. Mechanical Requirements. (1) General. Prior to completion of the contract and final acceptance of the facility, the architect

and/or engineer shall obtain from the contractor certification in writing that all mechanical systems have been tested and that the installation and performance of these systems conform with the final plans and specifications.

(2) Steam and hot water systems.

(a) Boilers. If boilers are used, a minimum of two (2) shall be provided and the combined capacity of the boilers, based upon the published Steel Boiler Institute or Institute of Boiler and Radiation Manufacturer's net rating, must be able to supply 150 percent of the normal requirements for all systems and equipment in the facility.

(b) Boiler accessories. Boiler feed pumps, condensate return pumps, fuel oil pumps, and circulation pumps shall be connected and installed to provide normal and standby service.

(3) Air-conditioning, heating and ventilation systems.

(a) Temperatures. For all areas occupied by inpatients, the indoor winter design temperature shall be seventy-two (72) degrees Fahrenheit and the indoor summer design temperature shall be seventy-five (75) degrees Fahrenheit.

(b) Ventilation system details. All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates as shown in Section 19, Table 2 of this regulation, shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates.

1. Outdoor air intakes shall be located as far as practical but not less than twenty-five (25) feet from exhaust outlets of ventilation systems, combustion equipment stacks, plumbing vent stacks, or from areas which may collect vehicular or other noxious fumes. The bottom of outside air intakes serving central air systems shall be located as high as practical but not less than six (6) feet above ground level or if installed above the roof, three (3) feet above roof level.

2. The ventilation systems shall be designed and balanced in accordance with the pressure relationships as shown in Section 19, Table 2 of this regulation.

3. All room supply, return and exhaust outlets shall be located not less than three (3) inches above the finished floor.

4. Corridors shall not be used to supply air to or exhaust air from any room, except that exhaust air from corridors may be used to ventilate rooms such as bathrooms, toilet rooms, or janitor's closets which open directly on corridors.

(4) Plumbing systems.

(a) Lavatories and sinks required in patient care areas shall have the water supply spout mounted so that its discharge point is a minimum of five (5) inches above the rim of the fixture. All fixtures in medical and nursing staff work areas and all lavatories used by food handlers shall be equipped with valves which can be operated without the use of hands. Where blade handles are used for this purpose, they shall not exceed four and one-half (4 1/2) inches in length, except that handles on scrub sinks and clinical sinks shall be not less than six (6) inches long. These special fixtures are not required on lavatories in patient rooms or patient toilet rooms.

(b) Clinical sinks shall have an integral trap

in which the upper portion of a visible trap seal provides a water surface.

(c) Hot water heating systems. The hot water heating equipment shall have a sufficient capacity to supply water at the temperature and amounts indicated below:

	Hot Water Use		
	Clinical	Dishwasher	Laundry
Gal/hr/bed	61/2	4	41/2
Temp. F.	100-110	180*	140-180**

*Temperature may be reduced to 160 degrees Fahrenheit if a chloritizer is used. Required temperature must be maintained throughout the wash and rinse cycles.

**If the temperature used is below 180 degrees Fahrenheit, the facility shall utilize detergents and other additives to insure that the linens will be adequately cleaned.

Section 18. Electrical Requirements. (1) General. All material including equipment, conductors, controls, and signaling devices shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the plans. All materials shall be listed as complying with applicable standards of Underwriters' Laboratories, Inc., or other similarly established standards.

(2) Panel boards. Lighting and appliance panel boards shall be located on the same floor as the circuits they serve.

(3) Lighting. Patients' bedrooms shall have general lighting and night lighting. A reading light shall be available for each patient. Patients' reading lights and other fixed lights not switched at the door shall have switch controls located convenient to the luminaire. A fixed type night light shall be provided in each patient room.

(4) Receptacles (convenience outlets).

(a) Patient room. Each patient room shall have duplex receptacles as follows: one (1) on each side of the head of the bed; and one (1) on another wall. Receptacles shall be of the safety type or shall be protected by five (5) milliamperes ground fault interrupters.

(b) Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart and within twenty-five (25) feet of ends of corridors. Receptacles shall be of the safety type or shall be protected by five (5) milliamperes ground fault interrupters.

(5) Nurses' emergency calling system. An emergency calling system, which may be used by nurses to summon assistance, shall be provided in each nursing unit.

(6) Emergency electrical.

(a) To provide electricity during interruption of the normal electric supply, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power.

(b) The source of this emergency electric service shall be as follows:

1. An emergency generating set, when the normal service is supplied by one (1) or more central station transmission lines.

2. An emergency generating set or a central station transmission line, when the normal

electric supply is generated on the premises.

(c) Emergency generating set. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system. Generator sets shall be self-sufficient insofar as possible without dependency on public utilities that may be subject to cutoff or outages. Exception: A system of prime movers which are ordinarily used to operate other equipment and alternately used to operate the emergency generator(s) will be permitted provided that the number and arrangement of the prime movers are such that when one (1) of them is out of service (due to breakdown or for routine maintenance), the remaining prime mover(s) can operate the required emergency generator(s) and provided that the connection time requirements as listed in Section 19 of this regulation are met. The emergency generator set shall be of sufficient kilowatt capacity to supply all lighting and power load demands of the emergency electrical system. The power factor rating of the generator shall be not less than eighty (80) percent.

(d) Emergency electrical connections. Emergency electric service shall be provided to circuits as follows:

1. Lighting.

a. Exitways and all necessary ways of approach thereto including exterior of exits, exit doorways, stairways, and corridors.

b. Nursing station and medication preparation areas.

c. Generator set location, switch-gear location, mechanical room and boiler room;

d. Elevator cabs.

e. Night light in patient rooms.

f. Dining and recreational areas, occupational therapy and physical therapy.

2. Equipment. Essential to life safety and for protection of important equipment or vital materials:

a. Nurses' calling system.

b. Paging or speaker systems, if intended for issuing instructions during emergency conditions.

c. Fire pump and jockey pump, if installed.

d. Sewerage or sump lift pump, if installed.

e. Selected receptacles at the nurses' stations; medicine dispensing area; and basic laboratory functions, if provided.

f. Duplex receptacles in patient corridors.

g. Equipment necessary for maintaining telephone service.

3. Heating. Equipment for heating patient rooms; except that service for heating of patient rooms will not be required if:

a. The hospital is supplied by two (2) or more electrical services supplied from separate generating sources, or a utility distribution network having multiple power input sources and arranged to provide mechanical and electrical separation; so that a fault between the hospital and generating sources will not likely cause an interruption of the hospital service feeders;

b. The hospital has an alternate emergency heating system for the heating of corridors; or

c. The hospital has a written plan approved by the licensure agency for the transfer of patients within a reasonable time to other facilities.

(e) Details. The emergency electrical system shall be so controlled that after interruption of the normal electric power supply, the

generator is brought to full voltage and frequency and it must be connected within ten (10) seconds through one (1) or more primary automatic transfer switches to all emergency lighting systems; alarms systems; nurses' calling systems; equipment necessary for maintaining telephone service; and task illumination and receptacles in patient corridors. All other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification. Storage-battery-powered lights, provided to augment the emergency lighting or for continuity of lighting during the interim of transfer switching immediately following an interruption of the normal service supply, shall not be used as a substitute for the requirement of a generator. Where stored fuel is required for emergency generator operation, the storage capacity shall be sufficient for not less than twenty-four (24) hours of continuous operation.

Section 19 Table 1 - Sound Transmission Limitations in Psychiatric Hospitals. Table 2 - Pressure Relationships and Ventilation of Certain Psychiatric Hospital Areas.

Table 1.
Sound Transmission Limitations
in Psychiatric Hospitals

Location	Airborne Sound Transmission Class (STC)a*		Impact Insulation Class (IIC)b*
	Partitions	Floors	Floors
Patients' room to patients' room	45	45	45
Corridor to patients' room	40	45	45c*
Public space to patients' room d*	50	50	50c*
Service areas to patients' room e*	55	55	55c*

a*Sound transmission class (STC) shall be determined by tests in accordance with the methods set forth in ASTM Standard E-90 and ASTM Standard E-413.

b*Impact insulation class (IIC) shall be determined in accordance with criteria set forth in HUD FT/TS-24, "A guide to Airborne, Impact and Structure Borne Noise - Control in Multifamily Dwellings."

c*Impact noise limitation applicable only when corridor, public space, or service area is over patients' room.

d*Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar spaces.

e*Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above patients' rooms, offices, nurses' stations and similar occupied spaces shall be effectively isolated relating to noise

transmission.

Note: The requirements set forth in this table assume installation methods which will not appreciably reduce the efficiency of the assembly as tested.

Table 2.
Pressure Relationships and Ventilation of
Certain Psychiatric Hospital Areas

Area Designation	Pressure Relationship to Adjacent Areas	All Supply Air From Outdoors	Minimum Air Changes of Outdoor Air per Hour
Patient room	0	--	1
Patient area corridor	0	--	2
Treatment room	0	--	2
Physical therapy and hydrotherapy if applicable	N	--	2
Dining and recreation areas	0	--	2
Soiled workroom	N	--	2
Clean workroom	P	Yes	2
Toilet room	N	--	--
Bedpan room if applicable	N	--	--
Bathroom	N	--	--
Janitor's closet	N	--	--
Linen and trash chute rooms	N	--	--
Food preparation center	0	Yes	2
Dishwashing area	N	--	--
Dietary day storage	0	--	--
Laundry, general	0	Yes	2
Soiled linen sorting and storage	N	--	2
Clean linen storage	P	--	1

P=Positive N=Negative 0=Equal -- = Optional

Table 2. Continued

Area Designation	Minimum Total Air Changes Per Hour	All Air Exhausted Directly to Outdoors
Patient room	4	--
Patient area corridor	4	--
Treatment room	6	--
Physical therapy and hydrotherapy if applicable	6	--
Dining and recreation areas	4	--
Soiled workroom	4	Yes
Clean workroom	4	--

Toilet room	10	Yes
Bedpan room if applicable	10	Yes
Bathroom	10	Yes
Janitor's closet	10	Yes
Linen and trash chute rooms	10	Yes
Food preparation center	10	Yes
Dishwashing area	10	Yes
Dietary day storage	2	--
Laundry, general	10	Yes
Soiled linen sorting and storage	10	Yes
Clean linen storage	4	--

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in

conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

**CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)**

902 KAR 20:180. Psychiatric hospitals; operation and services.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040(2)], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides minimum licensure requirements for the operation and services of psychiatric hospitals and for the provision of psychiatric services in general hospitals which have a psychiatric unit.

[Section 1. Scope of Operation and Services. Psychiatric hospitals are establishments with organized professional staffs and permanent facilities with inpatient beds, which provide general medical and psychiatric services, continuous nursing services, psychological services, therapeutic activities, social services, and related support services for the diagnosis and treatment of patients who have a variety of mental illnesses.]

Section 1. [2.] Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Professional staff" means psychiatrists and other physicians, psychologists, psychiatric nurses and other nurses, social workers and other professionals with special education or experience in the care of the mentally ill who are involved in the diagnosis and treatment of patients with mental illness.

(3) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(4) "Restraint" means the application of any physical device, the application of physical body pressure by another person in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to a mentally ill patient with the sole or primary purpose of controlling or limiting the physical activities of the patient.

(5) "Seclusion" means the confinement of a mentally ill or mentally retarded patient alone in a locked room.

Section 1. Scope of Operation and Services.

Psychiatric hospitals are establishments with organized professional staffs and permanent facilities with inpatient beds, which provide general medical and psychiatric services, continuous nursing services, psychological services, therapeutic activities, social services, and related support services for the diagnosis and treatment of patients who have a variety of mental illnesses.

Section 3. Applicability. (1) General acute care hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and shall meet the requirements of 902 KAR 20:016 and the additional requirements contained in this regulation. A facility requesting licensure as a psychiatric hospital exclusively shall meet the requirements of this regulation.

(2) A facility shall not be licensed as or be called a psychiatric hospital unless it provides the full range of services required by this regulation and provides for the treatment of a variety of mental illnesses. Facilities which receive certificate of need approval and are licensed after the effective date of this regulation which have, according to the last Annual Hospital Utilization Report, an average daily census of patients whose primary illness is alcoholism or other chemical dependency exceeding ten (10) percent of the licensed bed capacity shall apply for a certificate of need to convert an appropriate number of beds to be licensed under 902 KAR 20:160, Chemical dependency treatment services.

Section 4. Administration and Operation. (1) General requirements.

(a) The hospital shall comply with the requirements of 902 KAR 20:016, Section 3 and the additional requirements contained in this section.

(b) The hospital shall comply with the requirements of KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of Mentally Ill and Mentally Retarded.

(2) Professional staff. A facility requesting licensure as a psychiatric hospital exclusively which operates with an organized professional staff shall comply with the following requirements rather than those in 902 KAR 20:016, Section 3(8):

(a) The hospital shall have a professional staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of clinical care provided to patients and for the ethical conduct and professional practice of its members.

(b) The professional staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. Require that a licensed physician be responsible for admission, diagnosis, all medical care and treatment, and discharge;

2. State the necessary qualifications for professional staff membership;

3. Define and describe the responsibilities and duties of each category of professional staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges, to include credentials review;

4. Provide a mechanism for appeal of decisions

regarding staff membership and privileges;

5. Provide a method for the selection of officers of the professional staff;

6. Establish requirements regarding the frequency of, and attendance at, general staff and department/service meetings of the professional staff; and

7. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, pharmacy and therapeutic committee, utilization review committee and quality assurance committee.

(c) The hospital shall develop a process of appointment to the professional staff which will assure that the person requesting staff membership is appropriately licensed, certified, registered, or experienced, and qualified for the privileges and responsibilities sought.

(3) Policies.

(a) The hospital's written admission and discharge policies shall be consistent with the requirements of KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of Mentally Ill and Mentally Retarded.

(b) The hospital shall have written policies pertaining to patient rights and the use of restraints and seclusion consistent with KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of Mentally Ill and Mentally Retarded.

(c) The hospital shall also have written policies concerning the use of special treatment procedures that may have abuse potential, or be life-threatening, and specifying the qualifications required for professional staff using special treatment procedures.

(4) Patient rights. The hospital shall assure that patient rights are provided for pursuant to the requirements of KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of Mentally Ill and Mentally Retarded.

(5) Medical records.

(a) Patient information shall be released only on written consent of the patient or the patient's authorized representative, or as otherwise authorized by law. The written consent shall contain the following information:

1. The name of the person, agency or organization to which the information is to be disclosed;

2. The specific information to be disclosed;

3. The purpose of disclosure; and

4. The date the consent was signed and the signature of the individual witnessing the consent.

(b) In addition to the requirements of 902 KAR 20:016, Section 3(11)(d) the medical record shall contain:

1. Appropriate court orders and/or consent of patient, appropriate family members or guardians for admission, evaluation, and treatment;

2. A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;

3. Results of the psychiatric evaluation;

4. A complete social history;

5. An individualized comprehensive treatment plan;

6. Progress notes, dated and signed by

physician, nurse, social worker, psychologist, or other appropriate individuals involved in treatment of patient. Progress notes shall document all services and treatments provided and the patient's progress in response to such services and treatments;

7. A record of the patient's weight;

8. Special clinical justification for the use of special treatment procedures specified in Section 5(3) of this regulation;

9. A discharge summary which includes a recapitulation of the patient's hospitalization and recommendations from appropriate services concerning follow-up or after care as well as a brief summary of the patient's condition on discharge;

10. If a patient dies, a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician; and

11. When an autopsy is performed, a provisional anatomic diagnosis shall be included in the patient's record within seventy-two (72) hours, with the complete summary and pathology report, including cause of death, recorded within three (3) months.

Section 5. Patient Management. (1) Assessment. The hospital shall be responsible for conducting a complete assessment of each patient.

(a) A provisional or admitting diagnosis, which includes the diagnosis of physical diseases, if applicable, as well as the psychiatric diagnosis, shall be made on each patient at the time of admission.

(b) A physical examination of each patient shall be completed and appropriate laboratory tests shall be initiated within twenty-four (24) hours after admission. A physician shall be responsible for assessing each patient's physical health.

(c) A psychiatric evaluation for each patient shall be completed within seventy-two (72) hours of admission. It shall include a medical history; a record of mental status; details regarding onset of illness and circumstances leading to admission; a description of attitudes and behavior; an estimate of intellectual functioning, memory functioning, and orientation; and an inventory of the patient's assets in a descriptive, not interpretative, fashion.

(d) A social assessment of each patient shall be recorded.

(e) An activities assessment of each patient shall be prepared and shall include information relating to the patient's current skills, talents, aptitudes, and interest.

(f) When appropriate, nutritional, vocational, and legal assessments shall be conducted. The legal assessment shall be used to determine the extent to which the patient's legal status will influence progress in treatment.

(2) Treatment plans. Each patient shall have a written individualized treatment plan that is based on assessments of his/her clinical needs and approved by the patient's attending physician. Overall development and implementation of the treatment plan shall be assigned to appropriate members of the professional staff.

(a) Within seventy-two (72) hours following admission, a designated member of the professional staff shall develop an initial treatment plan that is based on at least an

assessment of the patient's presenting problems, physical health, emotional and behavioral status. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A master treatment plan shall be developed by a multidisciplinary team within ten (10) days for any patient remaining in treatment beyond the initial evaluation. It shall be based on a comprehensive assessment of the patient's needs and include a substantiated diagnosis and the short-term and long-range treatment needs and address the specific treatment modalities required to meet the patient's needs.

1. The treatment plan shall include referrals for services not provided directly by the facility.

2. The treatment plan shall contain specific and measurable goals for the patient to achieve.

3. The treatment plan shall describe the services, activities, and programs to be provided to the patient, and shall specify staff members assigned to work with the patient and also the time/frequency for each treatment procedure.

4. The treatment plan shall specify criteria to be met for termination of treatment.

5. The patient shall participate to the maximum extent feasible in the development of his/her treatment plan, and such participation shall be documented in the patient's record.

6. A specific plan for involving the patient's family or significant others shall be included in the treatment plan when indicated.

7. The treatment plan shall be reviewed and updated through multidisciplinary case conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter for the first year of treatment.

8. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(3) Special treatment procedures.

(a) Special documentation shall be included in the patient's medical record concerning the use of restraints, seclusion and other special treatment procedures which may have abuse potential or be life threatening.

(b) The documentation shall include a physician's written order, justification for the use of the procedure, the required consent forms, a description of any procedures employed to protect the patient's safety and rights, and a description of the procedure used.

(c) The use of physical restraints and seclusion shall be governed by the following:

1. Restraint or seclusion shall be used only to prevent a patient from injuring himself or others, or to prevent serious disruption of the therapeutic program;

2. A written, time-limited order from a physician shall be required for the use of restraint or seclusion;

3. The head of the medical staff shall give written approval when restraint or seclusion is utilized for longer than twenty-four (24) hours;

4. PRN orders shall not be used to authorize the use of restraint or seclusion;

5. The head of the medical staff or his designee shall review daily all uses of restraint or seclusion and investigate unusual or possibly unwarranted patterns of utilization;

6. Restraint or seclusion shall not be used in

a manner that causes undue physical discomfort, harm, or pain to the patient; and

7. Appropriate attention shall be paid every fifteen (15) minutes to a patient in restraint or seclusion, especially in regard to regular meals, bathing, and use of the toilet; and staff shall document in the patient's record that such attention was given to the patient.

Section 6. Provision of Services. (1) Psychiatric and general medical services.

(a) Psychiatric services shall be under the supervision of a clinical director, service chief, or equivalent, who is qualified to provide the leadership required for an intensive treatment program.

1. The clinical director, or equivalent, shall be certified by the American Board of Psychiatry and Neurology, or meet the training and experience requirements for examination by the board.

2. If the psychiatrist in charge of the clinical program is not board certified, there shall be evidence that consultation is given to the clinical program on a continuing basis by a psychiatrist certified by the American Board of Psychiatry and Neurology.

(b) General medical services provided in the hospital shall be under the direction of a physician member of the professional staff in accordance with staff privileges granted by the governing authority.

1. A physician member of the professional staff shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.

2. All incidental medical services necessary for the care and support of patients shall be provided by in-house staff or through agreement with outside resources. When the patient's condition requires services not available in the hospital, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

3. There shall be a written plan delineating the manner in which emergency services are provided by the hospital or through clearly defined arrangements with another facility. The plan shall clearly specify the following:

a. The arrangements the hospital has made to assure that the patient being transferred for emergency services to a nonpsychiatric facility will continue to receive further evaluation and/or treatment of his/her psychiatric problem, as needed;

b. The policy for referring patients needing continued psychiatric care after emergency services back to the referring facility; and

c. The policy concerning notification of the patient's family of emergencies and of arrangements that have been made for referring or transferring the patient to another facility for emergency service.

(c) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(d) There shall be sufficient physician staff coverage for all psychiatric/medical services of the hospital in keeping with their size and scope of activity.

(e) The attending physician shall state his final diagnosis, complete the discharge summary and sign the records within fifteen (15) days

following the patient's discharge.

(2) Nursing services.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice.

(b) The psychiatric nursing service shall be under the direction of a registered nurse who:

1. Has a master's degree in psychiatric or mental health nursing, or its equivalent, from a school of nursing accredited by the National League for Nursing; or

2. Has a baccalaureate degree in nursing with two (2) years' experience in nursing administration or supervision and experience in psychiatric nursing.

(c) There shall be a registered nurse on duty twenty-four (24) hours a day.

(d) There shall be an adequate number of registered nurses, licensed practical nurses, and other nursing personnel to provide the nursing care necessary under each patient's active treatment program.

(e) There shall be continuing in-service and staff development programs to prepare the registered nurses and other nursing personnel for active participation in interdisciplinary meetings affecting the planning or implementation of nursing care plans for patients.

(3) Psychological services.

(a) The hospital shall provide psychological services to meet the needs of patients.

(b) Psychological services shall be provided under the direction of a licensed psychologist.

(c) There shall be an adequate number of psychologists, consultants, and supporting personnel to assist in essential diagnostic formulations, and to participate in program development and evaluation of program effectiveness, in training activities and in therapeutic interventions.

(4) Therapeutic activities.

(a) The hospital shall provide a therapeutic activities program that is appropriate to the needs and interests of the patients and is directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(b) The number of qualified therapists, support personnel, and consultants shall be adequate to provide comprehensive therapeutic activities, such as occupational, recreational, and physical therapy, consistent with each patient's active treatment program.

(5) Pharmaceutical services. The hospital shall comply with requirements of 902 KAR 20:016, Section 4(5) and the following additional requirements:

(a) Medications shall be administered by a registered nurse, a physician, or dentist, except in the case of a licensed practical nurse under the supervision of a registered nurse.

(b) No medication shall be given without a written order signed by a physician, or dentist when applicable. Telephone orders for medications shall be given only to registered nurses or a pharmacist and signed by the physician or dentist within twenty-four (24) hours from the time the order is given.

(6) Laboratory services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4(4) concerning the provision of laboratory and pathology services.

(7) Social services.

(a) The hospital shall provide social services to meet the need of the patients.

(b) There shall be a director of social services who has a master's degree from an accredited school of social work.

(c) There shall be an adequate number of social workers, consultants, and other assistants or case aides to perform the following functions:

1. Secure information about patients development and current life situations to provide psychosocial data for diagnosis and treatment planning and for direct therapeutic services to patients, patient groups or families;

2. Identification or development of community resources including family or foster care programs;

3. Participate in interdisciplinary conferences and meetings concerning diagnostic formulation, treatment planning and progress reviews; and

4. Participate in discharge planning, arrange for follow-up care, and develop mechanisms for exchange of appropriate information with sources outside the hospital.

(8) Dietary services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4(3), pertaining to the provision of dietary services, plus the additional requirements contained in this subsection.

(a) Dietary service personnel who have personal contact with the patients shall be made aware that emotional factors may cause patients to change their food habits and shall inform appropriate members of the professional staff of any change.

(b) Meals shall be provided in central dining areas for ambulatory patients.

(9) Radiology services. If radiology services are provided within the facility, the hospital shall comply with the requirements of 902 KAR 20:016, Section 4(6) concerning the provision of such services. If they are not provided within the facility, the hospital shall have arrangements with an outside source, which shall be outlined in a written plan, for the provision of radiology services. The outside radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder.

(10) Other services. If surgery, anesthesia, physical therapy or outpatient services are provided within the facility, the hospital shall comply with the applicable sections of 902 KAR 20:016.

(11) Chemical dependency treatment services. Psychiatric hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Sections 3 and 4, and designate the location and number of beds to be used for this purpose.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at

the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES Office of Inspector General (Proposed Amendment)

902 KAR 20:190. Rehabilitation agency services.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042 [040(2)], 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 [040] and 216B.105 mandate that the Kentucky Cabinet for Human Resources [Health Facilities and Health Services Certificate of Need and Licensure Board] regulate health facilities and health services. This regulation provides the minimum

licensure requirements for the operation and services of rehabilitation agencies.

[Section 1. Scope of Operation and Services. A rehabilitation agency is an organization with permanent facilities which provides services designed to upgrade the physical function of handicapped and disabled individuals. The agency shall provide outpatient services in the facility. Outreach services may be provided in other settings such as the patient's home, long term care facilities or schools. A rehabilitation agency must provide physical therapy or speech pathology services and also may provide audiology and occupational therapy.]

Section 1. [2.] Definitions. (1) "Audiologist" means an individual licensed as an audiologist by the Kentucky Board of Examiners of Speech Pathology and Audiology.

(2) "Audiology aide" means an individual certified as an audiology aide by the Kentucky Board of Examiners of Speech Pathology and Audiology.

[(3) "Cabinet" means Cabinet for Human Resources.]

(3) [(4)] "Long term care facility" means those health care facilities in the Commonwealth which are defined by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled.

(4) [(5)] "Occupational therapist" means an individual certified by the American Occupational Therapy Association as an occupational therapist, registered.

(5) [(6)] "Occupational therapy assistant" means an individual certified by the American Occupational Therapy Association as an occupational therapy assistant.

(6) [(7)] "Physical therapist" means an individual licensed as a physical therapist by the Kentucky Board of Physical Therapy.

(7) [(8)] "Physical therapist's assistant" means an individual certified as a physical therapist's assistant by the Kentucky Board of Physical Therapy.

(8) [(9)] "Speech pathologist" (speech-language pathologist) means an individual licensed as a speech pathologist by the Kentucky Board of Examiners of Speech Pathology and Audiology.

(9) [(10)] "Speech pathology aide" means an individual certified as a speech pathology aide by the Kentucky Board of Examiners of Speech Pathology and Audiology.

Section 2. Scope of Operation and Services. A rehabilitation agency is an organization with permanent facilities which provides services designed to upgrade the physical function of handicapped and disabled individuals. The agency shall provide outpatient services in the facility. Outreach services may be provided in other settings such as the patient's home, long term care facilities or schools. A rehabilitation agency must provide physical therapy or speech pathology services and also may provide audiology and occupational therapy.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the operation of the agency and for compliance with federal, state, and local laws pertaining to the operation of the service.

(b) The licensee shall appoint a full-time administrator whose qualifications, responsibilities, authority and accountability shall be defined in writing. The licensee shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall be responsible for the daily management of the facility and provide liaison between the licensee and staff.

(b) The administrator shall keep the licensee fully informed of the conduct of the facility through periodic reports and by attendance at meetings with the licensee.

(3) Administrative records and reports. Administrative reports shall be established, maintained and utilized as necessary to guide the operation measure productivity and reflect the programs of the facility. Such reports shall include:

(a) Minutes of staff meetings, financial records and reports, incident investigation reports and other pertinent reports made in the regular course of business; and

(b) Licensure inspection reports and plans of correction. The facility shall make available in a conspicuous place, a complete copy of every inspection report for the facility received from the cabinet during the previous three (3) years, including the most recent inspection report.

(4) Patient care policies. The licensee shall have written patient care policies to govern the services provided which are established by a group of professionals including at least one (1) physician and at least one (1) qualified therapist (i.e., a physical therapist, occupational therapist, speech pathologist or audiologist). Patient care policies shall be reviewed annually and revised as necessary. These policies shall address:

(a) Admission and discharge;

(b) Physician services;

(c) Patient care plans and methods of implementation;

(d) Care of patients in an emergency;

(e) Infection control;

(f) Clinical records;

(g) Administrative records; and

(h) Program evaluation.

(5) Personnel.

(a) The facility shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services. There shall be written personnel policies which are made available to all employees.

(b) There shall be a written job description for each position which shall be reviewed and revised as necessary.

(c) Current personnel records shall be maintained for each employee which include the following:

1. Name, address and social security number;

2. Evidence of current registration, certification or licensure of personnel;

3. Records of training and experience; and

4. Records of performance evaluation.

(6) Clinical records.

(a) The facility shall have a clinical records service with administrative responsibility for clinical records. A clinical record shall be

maintained, in accordance with accepted professional principles, for every patient treated by the facility.

(b) The clinical record shall contain sufficient information to identify the patient, justify the diagnosis(es) and treatment, and document the results accurately. All records shall contain the following information:

1. Identification data and consent forms;

2. Documented evidence of the assessment of the needs of the patient, an appropriate plan of care and the care and services provided;

3. Medical history;

4. Report of physical examinations, if any;

5. Diagnosis;

6. Observation and progress notes;

7. Reports of treatments and clinical findings; and

8. Discharge summary including final diagnosis(es) and prognosis.

(c) Current clinical records and those of discharged patients shall be completed promptly. All entries into the record shall be signed by the person making the entry.

(d) The facility shall have available a sufficient number of regularly assigned employees so that clinical records services may be provided as needed.

(e) All clinical records shall be retained for a minimum of five (5) years from the conclusion of treatment or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is longer.

(f) Provision shall be made for written designation of specific location(s) for the storage of clinical records in the event the facility ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the facility to safeguard both the record and its content against loss, defacement and tampering.

(g) A system of identification and filing to insure the prompt location of a patient's clinical record shall be maintained.

(7) Quality assurance and program evaluation.

(a) The agency shall have procedures which provide for quality assurance and the systematic evaluation of its total program to assure appropriate utilization of services, determine whether the organization's policies are followed in providing services to patients through employees or under a contractual arrangement with others, and to assure that services are provided according to generally accepted professional principles and are designed to meet the specific needs of the patients.

(b) A sample of active and closed clinical records shall be reviewed quarterly by the appropriate health professionals to assure that established policies are followed in providing services.

(c) An evaluation shall be conducted annually of statistical data such as the number of different patients treated, number of patient visits, condition on admission and discharge, number of new patients, number of patients by diagnosis(es), source of referral and total staff days or work hours by discipline.

Section 4. Provision of Services. (1) Physician services.

(a) Patients in need of occupational therapy services shall be accepted for treatment only on the order of a physician. Patients in need of physical therapy services shall be accepted for

treatment only upon referral from a licensed doctor of medicine, osteopathy, dentistry, chiropractic or podiatry. All patients referred by a physician shall be seen by the physician at least once every thirty (30) days unless justified and documented by the physician in the patient's clinical record.

(b) For each patient there shall be a written plan of care which indicates anticipated goals and specifies the type, amount, frequency and duration of physical therapy, occupational therapy, speech pathology or audiology services. The plan of care for physical or occupational therapy shall be developed in consultation between the physical therapist or occupational therapist and the licensed practitioner making the referral. The plan of care for speech or hearing therapy shall be developed by a speech pathologist or audiologist.

(c) The plan of care for patients referred by a physician shall be reviewed by the attending physician once every thirty (30) days or more often, if required, unless justified and documented by the attending physician in the patient's clinical record. The plan of care for all patients shall also be reviewed by the appropriate professional staff once every thirty (30) days or more often, if required, and the indicated action shall be taken.

(d) The attending physician shall be promptly notified of any changes in the patient's condition. If changes are required in the plan of care, such changes shall be approved by the physician and noted in the clinical record.

(e) The facility shall provide for one (1) or more physicians to be available on call to furnish necessary medical care in case of an emergency. A schedule listing the names and telephone numbers of these physicians and the specific days each is on call shall be posted.

(2) Treatment locations. Outpatient physical therapy, occupational therapy, speech pathology, or audiology services are provided on the facility's premises. Outreach services may be provided in other settings such as in the patient's home, long term care facilities or schools.

(3) Physical therapy services.

(a) If offered, physical therapy services shall be provided by or under the direct supervision of a physical therapist either directly or under arrangement with others under terms of a written contract. The number of licensed physical therapists and physical therapy assistants shall be adequate for the volume and diversity of services offered.

(b) The physical therapy program shall:

1. Provide services utilizing therapeutic exercise and the modalities of heat, cold, water, sound, electricity and traction;

2. Conduct patient evaluations and functional assessments; and

3. Administer tests and measurements of strength, balance, endurance, range of motion and activities of daily living.

(c) A physical therapist shall be present or readily available to provide required supervision to physical therapist's assistants pursuant to KRS Chapter 327 and any regulations promulgated thereunder.

(d) Patients shall be scheduled to ensure the physical therapist's presence when specific skills of a physical therapist are needed (e.g., the evaluation or reevaluation).

(e) Physical therapy services provided off the

premises of the facility by a physical therapist's assistant shall be under the supervision of a physical therapist who makes an on-site supervisory visit with the assistant at least once every thirty (30) days.

(4) Speech pathology and audiology services.

(a) If offered, speech pathology or audiology services shall be provided directly or under arrangement with others under terms of a written contract. Speech pathology and audiology services shall be provided by a speech pathologist or audiologist. The number of speech pathologists or audiologists shall be adequate for the volume and diversity of services offered. Speech pathology aides or audiology aides shall work under the direct supervision of a speech pathologist or audiologist pursuant to the provisions of KRS Chapter 334A and any regulations promulgated thereunder.

(b) The speech pathology or audiology program shall include diagnostic and treatment services to effectively treat speech or hearing disorders.

(c) The facility shall have the equipment and facilities required to provide the range of services necessary for the treatment of the types of speech or hearing disorders accepted for service.

(5) Occupational therapy services.

(a) If offered, occupational therapy services shall be provided by or under the direct supervision of an occupational therapist either directly or under arrangement with others under terms of a written contract. The number of registered occupational therapists and certified occupational therapy assistants shall be adequate for the volume and diversity of services offered.

(b) The occupational therapy program shall:

1. Conduct patient evaluations; and

2. Administer tests and measurements of strength, coordination, range of motion, activities of daily living, psychosocial adjustment, sensory-motor, cognitive and perceptual functioning and prevocational skills.

(c) A registered occupational therapist shall be present or readily available to provide required supervision to certified occupational therapy assistants.

(d) Occupational therapy services provided off the premises of the facility by the certified occupational therapy assistants shall be under the direct supervision of an occupational therapist who makes an on-site supervisory visit with the assistant at least once every thirty (30) days.

(e) The facility shall have the equipment and facilities required to provide the range of services necessary for the evaluation and treatment of the types of patients accepted for service.

(6) Contractual provision of physical therapy, occupational therapy, speech pathology or audiology services. When physical therapy, occupational therapy, speech therapy or audiology services are provided under contract, the contract shall:

(a) Assure that services are provided in accordance with the plan of care approved by the physician responsible for the patient's care which may not be altered in type, amount, frequency or duration by the physical therapist, occupational therapist, speech pathologist or audiologist (except in the case of an adverse reaction to a specific treatment);

(b) Specify the geographical areas in which

services are to be furnished;

(c) Provide that personnel and services contracted for meet the same requirements as those which would be applicable if the personnel and services are furnished directly;

(d) Provide that the physical therapist, occupational therapist, speech pathologist or audiologist (as appropriate) will participate in conferences required to coordinate the care of an individual patient, as needed;

(e) Provide for the preparation of treatment records with progress notes and observations, and for the prompt incorporation of such into the clinical records of the agency;

(f) Specify the period of time the contract is to be in effect and the manner of termination or renewal.

Section 5. Physical Environment. (1) Accessibility. The facility shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(2) Fire safety. The facility shall comply with all applicable fire safety codes.

(3) Maintenance. The licensee shall establish a written preventive maintenance program to ensure that:

(a) Equipment is operative and properly calibrated; and

(b) The exterior and interior of the building are clean and maintained free of any defect which is a potential hazard to patients, personnel and the public.

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 3, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller or Eric Friedlander

(1) Type and number of entities affected: The proposed amendment is in response to the requirements of KRS Chapter 13A and will not affect the type or number of entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no direct or indirect costs or savings as a result of this amendment.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$100 for reproduction of regulation.

2. Continuing costs or savings: \$50 for new copies of the survey report forms.

3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated.

(b) Reporting and paperwork requirements: New survey report forms for surveyors.

(3) Assessment of anticipated effect on state and local revenues: Licensure fees will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only alternative was to draft the regulation into bill form for statute enactment.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflict or duplication exists.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health services. All licensed services must meet administrative regulatory standards.

CABINET FOR HUMAN RESOURCES Department for Health Services (Proposed Amendment)

902 KAR 45:010. Definitions.

RELATES TO: KRS 217.005 to 217.215, 217.992

STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: The Cabinet for Human Resources is empowered by KRS 217.005, et seq. to regulate food. The purpose of this regulation is to define terms applicable to regulations adopted by the Cabinet for Human Resources relating to food and retail food markets.

Section 1. Definitions. The following terms shall have the meanings set forth below in regulations adopted by the Cabinet for Human Resources relating to food and retail food markets, unless clearly indicated otherwise.

[(1)] "Adulterated food and food products" means any food or food product adulterated as provided by KRS 217.025 of the Kentucky Food, Drug and Cosmetic Act.]

[(1)] [(2)] "Approved" means acceptable to the cabinet based on determination as to conformance with appropriate standards and good public health practices.

[(2)] [(3)] "Chemical preservative" means any chemical that, when added to a food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.

[(3)] [(4)] "Closed" means without openings large enough for the entrance of insects. An opening of one-sixteenth (1/16) inch or less is closed.

[(4)] [(5)] "Corrosion-resistant material" means those materials that maintain their original surface characteristics under prolonged

influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions and other conditions of the use environment.

[(6)] [(6)] "Cabinet" means the Cabinet for Human Resources and includes the local health department having jurisdiction and their duly designated representatives.]

[(5)] [(7)] "Easily cleanable" means that surfaces are readily accessible and made of such material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

[(6)] [(8)] "Employee" means the permit holder, individuals having supervisory or management duties and any other person working in a food handling establishment.

[(7)] [(9)] "Equipment" means stoves, ranges, hoods, ovens, (including microwave), cookers, bins, conveyor belts, refrigerators, freezers, mixers, grinders, saws, sinks, tables, display cases, meat blocks, wrapping machines, scales, check-out counters, vehicles and similar items.

[(8)] [(10)] "Food contact surfaces" means those surfaces with which food may come in contact, and those surfaces that drain onto surfaces that may come in contact with food.

[(9)] [(11)] "Food processing establishment" means a commercial establishment, that is under the inspection of a regulatory agency, in which food is processed, prepared, packaged or distributed for human consumption.

[(10)] [(12)] "Kitchenware" means all multiuse utensils other than tableware used in the storage, preparation, conveying or serving of food.

[(13)] "Misbranded food and food products" means any food or food product misbranded as provided by KRS 217.035 of the Kentucky Food, Drug and Cosmetic Act.]

[(11)] [(14)] "Packaged" means bottled, canned, cartoned, or securely wrapped at a food processing establishment.

[(12)] [(15)] "Package" means any container or wrapping in which any food is enclosed for use in the delivery or display to retail purchasers, but does not include: shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; containers used for tray pack displays in retail establishments; transparent wrappers or containers which do not bear written, printed, or graphic matter obscuring the label information, and any other exemption granted pursuant to the Federal Food, Drug and Cosmetic Act.

[(16)] "Person" includes any individual, partnership, corporation, association, or other legal entity.]

[(13)] [(17)] "Perishable food" means food of such type or in such conditions or physical state that it may spoil or otherwise become unfit for human consumption.

[(18)] "Pesticides" includes pesticides, insecticides, fungicides, herbicides, and rodenticides as defined in KRS 217B.040(2), (3), (4), (5), and (9) and any other toxic substance or compound designated by the cabinet.]

[(14)] [(19)] "Potentially hazardous food" means any food which consists in whole or in part of milk or milk products, eggs or egg products, meat or meat products, poultry or poultry products, fish or fish products, shellfish

(oysters, clams, mussels and edible crustacea) or shellfish products, cooked rice, or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. This term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of four and six-tenths (4.6) or below or a water activity value of eighty-five (85) percent or less, nor does it include hard-boiled, peeled eggs, commercially prepared, packaged and properly labeled.

[(15)] [(20)] "Reconstituted" means dehydrated food products combined with water or other liquids.

[(16)] [(21)] "Retail food market" or "market" means any establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but does not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries or food processing establishments.

[(17)] [(22)] "Safe temperature" means, when considering potentially hazardous food, food temperature of forty-five (45) degrees Fahrenheit or below and 140 degrees Fahrenheit or above, except for frozen food, which should be stored at zero degrees Fahrenheit, or less.

[(18)] [(23)] "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

[(19)] [(24)] "Sealed" means free of cracks or other openings which permit the entry or passage of moisture.

[(20)] [(25)] "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping material including bags, toothpicks and similar articles which are designed for one (1) time, one (1) person use and then discarded.

[(21)] [(26)] "Utensil" means any implement used in the preparation, storage, transportation or service of food.

[(22)] [(27)] "Wholesome" means in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 4, 1989

FILED WITH LRC: October 9, 1989 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1989 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John P. Draper

(1) Type and number of entities affected: 22,824 food and retail food establishments.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to affect entities because this regulation is being presented for quadrennial review.

1. First year: Same as above.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing cost, this regulation is being presented for quadrennial review.

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body: There are no effects on the promulgating administrative body, this regulation is being presented for quadrennial review.

(a) Direct and indirect costs or savings: Direct and indirect costs or savings will not be effected; they will remain the same.

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: See above.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no assessment of anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No suitable alternative method.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: This regulation is being editorially changed to comply with quadrennial review.

TIERING: Was tiering applied? No. This regulation applies to definitions only, tiering is not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The local health departments who are considered local government uses this administrative regulation as a tool to aid them in the interpretation of regulations adopted by the Cabinet for Human Resources relating to food and retail food markets.

3. State the aspect or service of local government to which this administrative regulation relates. The enforcement of regulations dealing with food and retail food markets.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this regulation is to define terms applicable to regulations relating to food and retail food markets.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:016. Standards for need and amount; AFDC.

RELATES TO: KRS 205.200(2), 205.210(1), 42 CFR 435.831, 45 CFR 233

STATUTORY AUTHORITY: KRS 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Assistance group" is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent(s), and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his eligible parent(s), the minor's parent(s) shall also be included in the assistance group if the minor's parent applied for assistance. The incapacitated natural or adoptive parent of the child(ren) who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent/legal guardian is considered any person under the age of eighteen (18).

(3) "Sanctioned individual" means any person who is required to be included in the assistance group but who is excluded from the assistance group due to failure to fulfill an eligibility requirement.

(4) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(5) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(6) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in a General Educational Development (GED) program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time; or

(d) Eight (8) clock hours per month in a literacy program.

(e) Twenty-five (25) clock hours per week in combination programs.

(7) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(8) "Combination programs" means any educational program which includes as its basis literacy or GED. This program must also include life skills, skills training or job readiness training.

(9) [(8)] "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 7 [8] of this regulation, and any educational allowance as set forth in Section 8 [9] of this regulation.

(10) [(9)] "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(11) [(10)] "Recoupment" means recovery of overpayments of assistance payments.

(12) [(11)] "Retrospective budgeting" means computing amount of assistance based on actual income and circumstances which existed in the second month prior to the payment month.

(13) [(12)] "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

Section 2. Resource Limitations. Real and personal property owned in whole or in part by an applicant or recipient including sanctioned individual(s) and his parent(s), even if the parent(s) is not an applicant or recipient, if the applicant/recipient is a dependent child living in the home of said parent, shall be considered. The amount that can be reserved by each assistance group shall not be in excess of \$1,000 equity value excluding those items specifically listed in subsection (1) of this section as follows:

(1) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Home furnishings, including all appliances;

(c) Clothing;

(d) One (1) motor vehicle, not to exceed \$1,500 equity value;

(e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise;

(f) Items valued at less than fifty (50) dollars each;

(g) One (1) burial plot/space per family member;

(h) Funeral agreements not to exceed maximum equity of \$1,500 per family member;

(i) Real property which the assistance group is making a good faith effort to sell. This exemption shall not exceed a period of nine (9) months and is contingent upon the assistance group agreeing to repay AFDC benefits received beginning with the first month of the exemption. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment. The amount of the repayment shall not exceed the net proceeds of the sale. If the property has not

been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Other items/benefits mandated by federal regulations.

(2) Disposition of resources. An applicant/recipient shall not have transferred or otherwise divested himself/herself of property without fair compensation in order to qualify for assistance. If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the household's application shall be denied, or assistance discontinued. The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer. If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

Section 3. Income Limitations. In determining eligibility for AFDC the following will apply:

(1) Gross income test. The total gross non-AFDC income of the assistance group, as well as income of parent(s), sanctioned individuals and amount deemed available from the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group, and amount deemed available from a stepparent(s) living in the home, and amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard. Disregards specified in Section 4(1) of this regulation shall apply. If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.

(2) Applicant eligibility test. If the gross income is below the gross income limitation standard and the assistance group has not received assistance during the four (4) months prior to the month of application, the applicant eligibility test shall be applied. The total gross income after application of exclusions/disregards set forth in Section 4(1) and (2) of this regulation shall be compared to the assistance standard set forth in Section 7 [8] of this regulation. If income exceeds this standard, the assistance group is ineligible. For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation. If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4(1), (2), and (3) of this regulation. If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible. Amount of assistance for the initial two (2) months of eligibility shall be determined prospectively in accordance with 45 CFR 233.34 and for subsequent months retrospectively, in accordance with 45 CFR

233.35.

(4) A period of ineligibility shall be established in accordance with 45 CFR 233.20(a)(3)(ii)(F), for applicants/recipients whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income. The ineligibility period shall be recalculated if any of the following circumstances occur:

(a) The standard of need increases and the amount of grant the assistance group would have received also changes.

(b) The income received has become unavailable to the assistance group for reasons beyond their control.

(c) The assistance group incurs and pays medical expenses in accordance with 42 CFR 435.831(C).

Section 4. Excluded/Disregarded Income. All gross non-AFDC income received or anticipated to be received by the assistance group, natural parent(s) and parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group and stepparent(s) living in the home, shall be considered with the applicable exclusions/disregards as set forth below:

(1) Gross income test. All incomes listed below shall be excluded/disregarded:

(a) Disregards applicable to stepparent income and/or income of the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with the assistance unit, as set forth in Section 5 of this regulation;

(b) Disregards applicable to alien sponsor's income, as set forth in Section 6 of this regulation;

(c) Disregards applicable to self-employment income, as set forth in 45 CFR 233.20(a)(6)(v)(B);

(d) Work Incentive Program (WIN) incentive payments;

(e) Earnings received by a dependent child from participation in the Summer Youth Program, Work Experience Program, Limited Work Experience Program, and Tryout Employment Program under the Job Training Partnership Act (JTPA) for a period not to exceed six (6) months within a given calendar year, effective March 1, 1988;

(f) Unearned income received by a dependent child from participation in a JTPA program;

(g) Reimbursement for training-related expenses made by a manpower agency to applicants or recipients in institutional and work experience training programs under the WIN program;

(h) Value of the monthly allotment of food stamp coupons or value of United States Department of Agriculture (USDA) donated foods;

(i) Nonemergency medical transportation payments;

(j) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program;

(k) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans to any undergraduate made or insured under any program administered by the United States Commissioner of Education;

(l) Highway relocation assistance;

(m) Urban renewal assistance;

(n) Federal disaster assistance and state disaster grants;

(o) Home produce utilized for household consumption;

(p) Housing subsidies received from federal, state or local governments;

(q) Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of Public Law 94-114 that became effective October 17, 1975;

(r) Funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, Public Law 93-134 or Public Law 94-540;

(s) Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(t) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under Titles II and III, pursuant to Section 418 of Public Law 93-113;

(u) Payments to volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113 except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

(v) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;

(w) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, adult foster care, or subsidized adoption;

(x) Payments made under the Low Income Home Energy Assistance Act (LIHEAP) and other energy assistance payments which are permitted to be excluded pursuant to 45 CFR 233.53 (c)(5)(i);

(y) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(z) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance;

(aa) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group; and

(bb) Effective January 3, 1989, loans.

(cc) Effective June 1, 1989, up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II.

(dd) Effective June 1, 1989, the essential person's portion of the SSI check.

(ee) The advance payment or refund of earned income tax credit (EITC).

(2) Applicant eligibility test. The exclusions/disregards set forth in subsection (1) of this section and those listed below shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC

child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of ninety (90) [seventy-five (75)] dollars for full-time and part-time employment; and

(d) Child care, for a child(ren) or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed \$175 [160] per month per individual for full-time employment or \$150 [110] per month per individual for part-time employment, or \$200 per month per individual for child under age two (2).

(3) Benefit calculation. After eligibility is established, exclude/disregard all incomes listed in subsections (1) and (2) of this section as well as:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. The one-third (1/3) portion of this disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income. The thirty (30) dollar portion of this disregard shall be applied concurrently with the one-third (1/3) disregard, however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence. These disregards shall be applied in accordance with 45 CFR 233.20(a)(11)(i)(D) and 45 CFR 233.20(a)(11)(ii)(B) and shall not be available to the individual until he/she has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Disregards from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in such employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at such job or training would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for such work in the community was not made; or

5. Effective February 1, 1988, the child care arrangement is terminated through no fault of the client; or

6. Effective February 1, 1988, the available child care does not meet the needs of the child(ren), e.g., handicapped or retarded children.

(b) Fails to make a timely report of earnings unless good cause exists as follows:

1. The assistance group moved and reported the move timely, however, the move resulted in a

delay in receiving or failure to receive the mandatory monthly report form; or

2. An immediate family member living in the home was institutionalized or died during the filing period; or

3. The specified relative was out of town during the entire filing period; or

4. The assistance group has been directly affected by a natural disaster (i.e., fire, flood, storm, earthquake).

(c) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section.

(5) Sanction exception. The earned income of sanctioned individuals shall be counted without providing the exclusion/disregards in either subsections (2) and (3) of this section.

Section 5. Income and Resources. Income and resources of a stepparent living in the home with a dependent child and parent(s)/legal guardian(s) living in the home with a minor parent/legal guardian but whose needs are not included in the grant are considered as follows:

(1) Income. The gross income is considered available to the assistance group, subject to the following exclusions/disregards:

(a) The first ninety (90) [seventy-five (75)] dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for the appropriate family size, for the support of the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian and any other individuals living in the home but whose needs are not taken into consideration in the AFDC eligibility determination and are or may be claimed by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian as dependents for purposes of determining his federal personal income tax liability;

(c) Any amount actually paid by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian to individuals not living in the home who are or may be claimed by him as dependents for purposes of determining his/her personal income tax liability;

(d) Payments by the stepparent and parent(s)/legal guardian(s) of a minor parent/legal guardian for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent and parent(s)/legal guardian(s) of a minor parent/legal guardian receiving Supplemental Security Income (SSI) under Title XVI.

(2) Sanction exception. The needs of any sanctioned individual are not eligible for the exclusion(s) listed in this section.

(3) Resources. Resources which belong solely to the stepparent and parent(s)/legal guardian(s) of a minor parent/legal guardian are not considered in determining eligibility of the parent or the assistance group.

Section 6. Alien Income and Resources. For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor. The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien(s), subject to disregards as set forth below, for a period of three (3) years following entry into the United States. If an individual

is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens. A sponsored alien is ineligible for any month in which adequate information on the sponsor/sponsor's spouse is not provided. If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization is no longer in existence or does not have the financial ability to meet the alien's needs. The provisions of this section shall not apply to those aliens identified in 45 CFR 233.51(e).

(1) Income. The gross income of the sponsor is considered available to the assistance group subject to the following disregards:

(a) Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

(b) An amount equal to the AFDC assistance standard for the appropriate family size of the sponsor and other persons living in the household who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability, and whose needs are not considered in making a determination of eligibility for AFDC;

(c) Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

(d) Actual payments of alimony or child support paid to nonhousehold members; and

(e) Income of a sponsor receiving SSI or AFDC.

(2) Resources. Resources deemed available to the alien(s) shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were an AFDC applicant in this state, less \$1,500.

[Section 7. Earned Income Tax Credit (EITC). In the case of an applicant or recipient of AFDC, EITC payments shall be considered as earned income when received.]

Section 7. [8.] Payment Maximum. The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, is as follows:

Effective July 1, 1989		
Number of Eligible Persons	Payment Maximum	Standard of Need
1 child	\$162	\$394
2 persons	\$196	\$460
3 persons	\$228	\$526
4 persons	\$285	\$592
5 persons	\$333	\$658
6 persons	\$376	\$724
7 or more persons	\$419	\$790

Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size. The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 8. [9.] Special Requirement Educational Allowance (SREA). An educational allowance for child care shall be included in the assistance standard each month at the request of the caretaker relative, if the criteria in subsection (1) of this section are met and verified for those month(s) and funds are available. Households receiving the educational allowance shall be subject to time frames, procedures, and penalties established for households required to report monthly. In addition, effective August 1, 1988 a transportation allowance shall be included in the assistance standard if the criteria in subsection (1)(a) and (b) of this section are met. Effective May 1, 1989, SREA recipients may request that the SREA payment be issued directly to the child care provider of their choice unless the caretaker relative has more than one (1) provider in a given month.

(1) Technical requirements. The following requirements shall be met during any month for which an education allowance is paid.

(a) The caretaker relative shall be included in the assistance grant;

(b) The caretaker relative shall be enrolled full time, as defined in Section 1 of this regulation, in a literacy program, high school (including primary and secondary), vocational school, or a General Educational Development (GED) program or combination program for which no wage or child care allowance is received. If attending college, the caretaker relative shall be enrolled either full or part-time, as defined in Section 1 of this regulation;

(c) A cost shall have been incurred for the care of a child(ren) who is/are under the age of thirteen (13) or a child(ren) who is/are under the age of eighteen (18), if a physician determines the child is unable to attend school due to a physical or mental disability, and is/are included in the assistance grant; and

(d) The payment for child care is made to a provider who is not a household member.

(2) Educational allowance payment standards. The amount of the monthly transportation allowance shall be twenty (20) dollars. The amount of monthly educational allowance payment shall be based on the number of eligible children for whom care is being provided and whether or not enrollment is full or part-time. Effective May 1, 1989 the payment standards are as follows:

	1 Child		2 or More Children	
	Full-Time	Part-Time	Full-Time	Part-Time
Literacy	\$ 20	-	\$ 36	-
GED	\$ 94	-	\$169	-
Elementary School/Junior High	\$174	-	\$313	-
High School	\$174	-	\$313	-
Vocational School	\$174	-	\$313	-
College/University	\$174	\$143	\$313	\$257
		[103]		[185]
Combination Programs	\$174	\$143	\$313	\$257
[Kenan/PACE	\$143	-	\$257	-]

The only combination programs recognized in operating JET counties are those authorized by the department.

(3) Limitations. The number of months a child care educational allowance payment or a

transportation educational allowance payment is made shall be limited according to the type of program in which the student enrolls and shall not be provided beyond completion of one (1) program at each level.

(a) Literacy: Type of Program Maximum
 Literacy 24 months

(b) High school level.

1. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
General Educational Development (GED)	16 months
High School (includes primary and secondary)	27 months

2. A student wishing to continue his education past the high school level may be eligible for additional payments not to exceed the maximums for the posthigh school level.

(c) Posthigh school level. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
Vocational School	24 months
College/University	50 months

Effective May 1, 1989, if a student changes enrollment from full time to part time or from part time to full time during the month, payment shall be authorized for the type of enrollment in which the student participated for the majority of the month.

Section 9. [10.] Recoupment. The following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The overpaid assistance unit;

(b) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(c) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 7 [8] of this regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) Overpayments may be waived for inactive nonfraud cases involving less than thirty-five (35) dollars in overpayment.

(5) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment

to current recipients.

(6) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing is given and the administrative and judicial remedies have been exhausted or abandoned in accordance with Title 904, Chapter 2.

Section 10. [11.] Provisions contained in this regulation shall become effective October 1, 1989 [as specified within the regulation].

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: September 25, 1989

FILED WITH LRC: October 2, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1989 at 9 a.m. at the Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director

(1) Type and number of entities affected: 8,700 AFDC families with income are affected by the work expense standard, increased child care and applying child care deduction last. Earned income tax credit (EITC) would only affect families utilizing it. Combination programs - number of recipients is unknown at this time.

(a) Direct and indirect costs or savings to those affected:

1. First year: \$2.6 million direct costs for work expense standard, increased full-time child care and applying child care deduction last. There is a \$96,000 direct cost increase for part-time child care. EITC has little effect. Combination programs - none.

2. Continuing costs or savings: Direct costs would increase/decrease each year proportionately to AFDC families with income. EITC has no continuing cost or savings. Combination programs - none.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This regulation is being revised to conform to technical requirements mandated in the Family Support Act of 1988.

TIERING: Was tiering applied? No. Eligibility for the AFDC program must be applied on a consistent and equitable basis throughout the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 402 of the Social Security Act.

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. This federal mandate increases the work expense standard and child care payments. It also allows states to disregard the income received from tax credits.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None. Stricter standards will not be imposed.

CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management and Development (Proposed Amendment)

904 KAR 2:055. Hearings and appeals.

RELATES TO: KRS 205.231

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility under 42 CFR section 431.220, 45 CFR section 205.10, and KRS 205.231 to provide for a system of hearings to be available to any applicant for or recipient of an assistance program who is dissatisfied with any action or inaction on the part of the cabinet. This regulation sets forth the methods by which the hearing requirement is fulfilled.

Section 1. Informing the Applicant or Recipient of His Rights. Each applicant or recipient shall be informed orally and in writing when application is made and in writing when any action is taken affecting his claim of his right to a hearing, the method by which he may obtain a hearing and that he may be represented by an authorized representative, such as legal counsel, relative, friend or other spokesperson, or he may represent himself.

Section 2. Request for a Hearing. Any applicant or recipient or an authorized representative acting on his behalf, may request

a hearing by filing with either the local office or central office of the Department for Social Insurance a written or oral (later reduced to writing) statement clearly indicating a desire for a hearing.

Section 3. Time Limitation for Request. To be considered timely, a written or oral request shall be received by the department within thirty (30) days of the date of the advance notice of adverse action or notice of decrease or discontinuance as it affects recipients, or within thirty (30) days of the notice of denial of an application. An additional thirty (30) days for requesting a hearing may be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:

(1) The applicant/recipient was away from home during the entire filing period; or

(2) The applicant/recipient is unable to read or to comprehend the notice of adverse action or notice of decrease or discontinuance and right to request a hearing; or

(3) The applicant/recipient moved resulting in delay in receiving or failure to receive notice of adverse action or notice of decrease or discontinuance; or

(4) Serious illness of the applicant/recipient; or

(5) The delay was no fault of the applicant/recipient.

Section 4. Continuation of Assistance. If the request results from dissatisfaction regarding a proposed discontinuance, suspension or decrease and is received within ten (10) days of the date on the advance notice of adverse action or notice of decrease or discontinuance, assistance shall be continued (unless the client requests the discontinuance, suspension or decrease be in effect pending the hearing decision) through the month in which the hearing officer's decision is rendered. If the request is received within twenty (20) days of the date on the advance notice of adverse action or notice of decrease or discontinuance and it is established that the reason for delay meets the good cause criteria as contained in Section 3 of this regulation, assistance shall be reinstated and continued through the month in which the hearing officer's decision is rendered (except that this requirement shall not require a continuation of benefits when the program benefit has been discontinued as a result of a change in law, regulations, or policy of the cabinet). Continued or reinstated benefits are considered overpayments if the agency decision is upheld.

Section 5. All Hearing Requests shall be Acknowledged by the Hearing Branch. The acknowledgment letter shall contain information regarding the hearing process, including the right to case record review prior to the hearing, the right to representation, and a statement to the effect that the local office can provide information regarding the availability of free representation by legal aid or welfare rights organizations within the community. Subsequent notification shall include the time and place the hearing will be held. Hearings shall be scheduled on a timely basis to assure that no more than ninety (90) days shall elapse from date of request to date of decision, with the exception that any hearing

determination regarding a community spouse income/resource allowance shall be held within thirty (30) days of the hearing request date.

Section 6. Withdrawal or Abandonment of Request. The applicant or recipient may withdraw his request for a hearing prior to release of the hearing officer's decision, provided he is granted the opportunity to discuss withdrawal with his legal counsel or representative, if any, prior to finalizing the action. A hearing request shall be considered abandoned if the applicant or recipient fails without prior notification, to report for the hearing, except that no hearing request shall be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, the opportunity to establish that such failure was for good cause.

Section 7. Applicant's or Recipient's Rights Prior to a Hearing. All applicants/recipients shall be informed of their right to legal counsel or other representation, of the right to case record review relating to the issue and of the right to submit additional information in support of the claim. When the hearing involves medical issues, a medical assessment by other than the person or persons involved in the original decision shall be obtained at cabinet expense if the hearing officer considers it necessary. If a medical assessment at cabinet expense is requested by the applicant/recipient and denied by the hearing officer, the reason for denial shall be set forth in writing.

Section 8. Corrective Action. If after a review of the case record, but prior to scheduling a hearing, the hearing officer determines that action taken or proposed to be taken, is incorrect, he shall authorize corrective action in the form of assistance to which the applicant or recipient would have been entitled but for the incorrect decision or, for proposed action, authorize continuing assistance. The applicant/recipient shall be then given the opportunity to withdraw the hearing request, but notwithstanding the corrective action, the hearing shall be scheduled if the applicant/recipient wishes to pursue the request.

Section 9. Conduct of a Hearing. (1) The hearing shall be conducted by a hearing officer whose impartiality is assured in that he shall not have been involved in the initial determination on the issue, or, to the extent possible, in previous hearings in behalf of the applicant/recipient. In addition a hearing officer may disqualify himself due to personal knowledge of circumstances of the applicant/recipient. The applicant/recipient may challenge the hearing officer by presentation of factual evidence that the impartiality criteria is not met. The hearing shall be conducted where the applicant/recipient may attend without undue inconvenience.

(2) The applicant/recipient, his representative and any other party to the hearing may present such evidence as shall be pertinent to the issue on which the adverse action was, or is proposed to be, taken, advance any arguments without undue interference.

(3) The hearing officer shall, if necessary to secure full information on the issue, examine

each party who appears and his witnesses. The hearing officer may take any additional evidence which he deems necessary; but if additional evidence is taken, all interested parties shall be afforded the opportunity of examining or rebutting such additional evidence.

(4) The parties to the hearing, with the consent of the hearing officer, may stipulate the facts involved, in writing. The hearing may be decided on the basis of such stipulation or the hearing officer may schedule a hearing and take such additional evidence as is deemed necessary.

(5) All hearings shall be conducted informally and in such a manner as to determine the substantial rights of the parties. Telephonic hearings may be conducted, when the applicant or recipient consents, including all of the parties and their witnesses who shall testify under oath or affirmation. All facts relevant to the issue appealed shall be considered and passed upon:

(a) Parties to a telephonic hearing who wish to introduce documents or written materials into the record at the hearing shall immediately mail copies of such documents to the hearing officer and to the opposing party.

(b) Failure to provide both the hearing officer and the opposing party with copies of evidence referenced in paragraph (a) of this subsection may result in its being excluded from the record.

(6) Subpoenas may be issued by the hearing officer to compel attendance of any witness or the production of records except that subpoenas requested by the applicant/recipient shall be issued only on a sworn statement of need by the applicant/recipient.

(7) The hearing officer may direct or grant a continuance of a hearing to secure necessary evidence.

Section 10. The Decision. After the hearing is concluded, the hearing officer shall set forth in writing his finding of facts and issues, specifying the reasons for the decision and identifying the supporting evidence and regulations. Decisions with regard to a community spouse's income allowance are subject to downward adjustments as deemed necessary by the agency as circumstances causing financial duress change or no longer exist. The resource allowance is subject to this adjustment only with regard to resources attributed to the community spouse but not transferred in the first year. This adjustment is appealable pursuant to Section 4 of this regulation. A copy of the decision shall be mailed to the applicant/recipient and his representative. The decision, with respect to the issues considered, shall be final unless further appeal to the appeal board is initiated under KRS 205.231(4) within twenty (20) days from the date of mailing of the decision.

Section 11. Appeal from Decision of Hearing Officer. Any applicant/recipient or his authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3). To be timely, such request shall be received in a local office or the central office of the Department for Social Insurance within twenty (20) days of the date on which the hearing officer's decision was mailed, except that a request received within

thirty (30) days of the hearing officer's decision will be considered timely if the criteria in Section 3 of this regulation is met. The request shall be filed in writing or orally, later reduced to writing, and shall be considered filed on the day it is received.

Section 12. Applicant's or Recipient's Rights Prior to Appeal Board Consideration. All appeals shall be acknowledged in writing to the applicant/recipient and his authorized representative. The acknowledgment shall offer the opportunity to file briefs or submit new and additional proof and shall state the tentative date on which the board will consider the appeal.

Section 13. Appeal Board Review. All appeals to the appeal board shall be considered upon the records of the department and the evidence or exhibits introduced before the hearing officer unless the applicant/recipient specifically requests permission to file additional proof. When an appeal is being considered on the record, the parties may, if they desire, present written arguments and at the board's discretion be allowed to present oral arguments. In addition, the appeal board may direct the taking of additional evidence before it, if needed, to resolve the appeal. Such evidence shall be taken by the board after seven (7) days notice to the parties giving the parties the opportunity to object to introduction of additional evidence or to rebut or refute any additional evidence.

Section 14. The Appeal Board Decision. The decision of the appeal board, duly signed by members of the board, shall set forth in writing the facts on which the decision is based and shall be irrevocable in respect to the issues in the individual case unless set aside through the judicial review process as provided in KRS 205.234.

Section 15. Payments of Assistance. Payments of assistance to carry out decisions of hearing officers or the appeal board shall be made promptly and shall include the month of application or the month in which incorrect action of the cabinet adversely affected the applicant/recipient providing it is established that the applicant/recipient was eligible during the entire period in which assistance was withheld.

Section 16. Special Provisions Relating to Skilled Nursing and Intermediate Care Level of Care Determinations. The cabinet contracts [has contracted] with a peer review [the Sentinel] organization to perform level of care determinations for individuals in skilled nursing and general intermediate care facilities. For those individuals appealing the peer review organization's [Sentinel] level of care determinations, the following special provisions are applicable:

(1) Kentucky's designated peer review organization, [Sentinel], pursuant to its contract with the cabinet, makes level of care determinations (i.e., a determination as to whether patient status criteria is met). If the level of care determination is adverse to the client, a written notice of the decision (and of the client's appeal rights) is provided to the client (patient), physician of record, the facility (if any), and the cabinet. The client

then may begin the appeal process by requesting a reconsideration of the adverse decision. The request for reconsideration shall be made within sixty (60) days of the notice of the adverse decision. If the request for reconsideration is made within ten (10) days, benefits shall continue (as appropriate) until the reconsideration decision has been made. Reconsiderations shall be made within ten (10) working days of the request when the client is in the facility; if the request for reconsideration is received after the client has left the facility, the reconsideration shall be made within thirty (30) days.

(2) When the reconsideration decision is adverse to the client, he may then appeal to the cabinet in the usual manner. The appeal shall be filed within twenty (20) days of the date the client is notified of the reconsideration decision, and may be filed with the peer review organization [Sentinel] or directly with the department. If filed with the peer review organization, they [Sentinel, Sentinel] shall forward the request with appropriate medical records and any other necessary documentation to the cabinet.

(3) When a negative decision has been appealed to the cabinet, the appeal shall be processed as set forth in this regulation. This provision shall not require a continuation of benefits following a reconsideration and shall not be used to contravene the timeliness provisions contained in this section.

Section 17. Limitation of Fees. (1) Although the cabinet and its officers and employees, either in their official or personal capacity, are not liable for payment of any attorneys fees, the cabinet shall, in accordance with KRS 205.237, set the maximum fee that an attorney may charge the applicant or recipient for representation in all categories of public assistance as follows:

(a) Seventy-five (75) dollars for preparation and appearance at hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation (briefs included) of appeals to the appeal board;

(c) \$175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court;

(d) \$300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals.

(2) The fee agreed to by the representative and his client within the above maximums shall be deemed to have the approval of the cabinet.

(3) Enforcement of payment of such fee shall be a matter entirely between such counsel or agent and the applicant/recipient. Such fee shall not be deducted, either in whole or in part, from the benefit checks otherwise due and payable to the applicant/recipient.

Section 18. Hearings and Appeals Relating to Decisions to Reclassify or Transfer Mentally Retarded Persons in State Institutions. In lieu of the hearing and appeal process specified above, hearings and appeals relating to decisions to reclassify or transfer mentally retarded persons in state institutions shall be in accordance with the requirement of KRS 210.270.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: September 25, 1989

FILED WITH LRC: October 2, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1989 at 9 a.m. at the Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director

(1) Type and number of entities affected: 60 spousal impoverishment adult Medicaid cases the first year, 20-30 yearly after the first year.

(a) Direct and indirect costs or savings to those affected:

1. First year: The income allowance cap is set at \$1,500 per month, and resource allowance at \$60,000. Hearing decisions may raise these limits.

2. Continuing costs or savings: Once a hearing decision is made, a cap is set on resources and income on a continuing basis.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of approximately 60 additional hearings, or approximately \$15,000.

2. Continuing costs or savings: After the first year, the cost of 20-30 hearings per year or approximately \$5,000-\$7,500 yearly.

3. Additional factors increasing or decreasing costs: This funding will come from the Department for Medicaid Services which has a federal match of 72 percent approximately.

(b) Reporting and paperwork requirements: Only the paperwork required in the hearing process itself. This cost is included in (a) and (b).

(3) Assessment of anticipated effect on state and local revenues: Approximately 28 percent of cost will come from state Medicaid dollars.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method assessed; set forth in federal law.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation

with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 100-360, the Medicare Catastrophic Coverage Act of 1988, §1924 of the Social Security Act.

2. State compliance standards. This regulation specifies the required hearing within thirty days for spousal impoverishment cases. It also provides for downward adjustments to the income and resource allowances, by the agency, as circumstances causing financial duress change or no longer exist.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate specifically states 30 days for required hearing. The law requires revision of set income and resource allowances is necessary.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES

Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:116. Low income home energy assistance program.

RELATES TO: KRS 194.050

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by Public Law 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation states the eligibility and benefits criteria for each of two (2) components of energy assistance, subsidy and crisis, under the Home Energy Assistance Program (HEAP).

Section 1. Definitions. Terms used in HEAP are defined as follows:

(1) "Principal residence" is the place where a person is living voluntarily and not on a temporary basis; the place he considers home; the place to which, when absent, he intends to return; and the place is identifiable from other residences, commercial establishments, or institutions.

(2) "Energy" means electricity, gas, and any other fuel that is used to sustain reasonable living conditions.

(3) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(4) "Economic unit" is one (1) or more persons sharing common living arrangements.

(5) "Subsidy component" is the portion of benefits reserved as energy assistance for heating.

(6) "Crisis component" is the component administered by local organizations under contract with the cabinet to provide heating crisis assistance.

(7) "Life threatening situation" under the crisis component means without heat or will be without heat within forty-eight (48) hours and temperatures at a dangerous level for household members.

(8) An "authorized representative" is the person applying on behalf of a household who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

Section 2. Application. Each household or authorized representative of the household requesting assistance shall complete an application and provide information necessary to determine eligibility and benefit amount. An application shall not be considered completed until all information needed to determine eligibility and benefit amount is received.

Section 3. Eligibility Criteria. (1) A household shall meet the following conditions of eligibility for receipt of a HEAP payment under the subsidy and crisis components:

(a) The amount of continuing and noncontinuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application shall be considered. Income received on an irregular basis shall be prorated.

(b) Gross income for the calendar month preceding the month of application shall be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant shall spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (JET [WIN] and JTPA) normally disregarded in AFDC, federal payments or benefits which shall be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	\$ 548	\$ 6,578
	\$ [529	\$ 6,347]
2	735	8,822
	[709	8,503]
3	922	11,066
	[888	10,659]
4	1,109	13,310
	[1,068	12,815]
5	1,296	15,554
	[1,248	14,971]
6	1,483	17,798
	[1,427	17,127]

(c) For each household member more than six (6), the above income eligibility limitation for six (6) shall be increased by \$187 [180] monthly or \$2,244 [2,156] yearly.

(d) The household shall have total liquid assets at the time of application of not more than \$5,000. Excluded assets are cars, household or personal belongings, principal residence, cash surrender value of insurance policies, prepaid burial policies, real property, and cash on hand or in a bank account if the cash is income considered under paragraph (a) of this subsection.

(e) Applicants for the crisis component shall be without heat, be without fuel within five (5) days, have received a notice of disconnection of service, or require a heat system repair to obtain adequate heat.

(2) Households are eligible to receive benefits under the subsidy component once and under the crisis component not to exceed the maximum amount of benefits.

Section 4. Benefit Levels. Payment amounts for the subsidy and crisis components are set at a level to serve a maximum number of households while providing a reasonably adequate benefit relative to energy costs. In the subsidy component, the highest level of assistance shall be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(1) Payments to eligible households under the subsidy component shall be made for the full benefit amount based on type of energy for heating, monthly household income, and household size as follows:

Benefit Scales Subsidy Component

Scale A.
Energy Sources: Electricity

Monthly Household Income	Payment Amount	
	Household Size 1 and 2	Household Size 3 or More
\$ 0 - \$400	\$123	\$135
\$401 - \$800	\$105	\$117
Over \$800	---	\$101

Scale B.
Energy Sources: LP Gas (Propane), Fuel Oil, Kerosene, Natural Gas

Monthly Household Income	Payment Amount	
	Household Size 1 and 2	Household Size 3 or More
\$ 0 - \$400	\$113	\$125
\$401 - \$800	\$ 95	\$107
Over \$800	---	\$ 88

Scale C.
Energy Sources: Coal, Wood

Monthly Household Income	Payment Amount	
	Household Size 1 and 2	Household Size 3 or More
\$ 0 - \$400	\$100	\$112
\$401 - \$800	\$ 82	\$ 94
Over \$800	---	\$ 75

(2) If the cabinet receives a percentage of the federal funds authorized by Congress, benefits to eligible households under the subsidy component may be reduced proportionately.

(3) Benefits to eligible households under the crisis component shall be in the form of fuel or other energy for heating, heaters, blankets, sleeping bags, vouchers to purchase these items, or repair to a heating system to obtain adequate heat. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis, not to exceed a maximum of \$300 total benefit value for each eligible household.

(4) In the crisis component the contracting agency may take into consideration household resources available for home heating in determining the minimum amount necessary to alleviate the crisis.

(5) In the crisis component the benefit for a crisis of a household threatened with eviction whose heat is an undesignated portion of the rent, shall be for the energy portion of their rent which is defined as an amount up to the Standard Utility Allowance (SUA) in the Food Stamp Program as follows:

<u>Household Size</u>	<u>SUA</u>
<u>1 and 2</u>	<u>\$145</u>
<u>3</u>	<u>\$151</u>
<u>4 or more</u>	<u>\$166</u>

Section 5. Benefit Delivery Methods. Benefits shall be provided to eligible households as follows:

(1) When feasible, payment under the subsidy component is authorized by a two (2) party check made payable to the recipient and the provider or landlord if the heating is included as an undesignated portion of rent.

(2) When a two (2) party check is not issued under the subsidy component, the recipient shall sign a statement on the application prior to receipt of funds affirming that benefits received under HEAP shall be used solely for home energy.

(3) Under the subsidy component, at the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider (for example, when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments shall not exceed the maximum for the primary source of energy for heating. The household may decide how to divide payment if more than one (1) provider is used.

(4) For the crisis component, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency in the amount and value determined by the contracting agency necessary to alleviate the crisis, not to exceed the maximum allowable payment. Payments under the crisis component shall be authorized to the energy provider by one (1) party checks upon delivery of fuel, heaters, blankets, sleeping bags, restoration or continuation of service, or upon repair of the heating system.

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055, Hearings and appeals.

Section 7. Time Standards. Under the subsidy component, the cabinet shall make an eligibility determination promptly after receipt of a completed and signed application but not to

exceed thirty (30) days. Under the crisis component, completed applications shall be processed so that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours. Applicants under the crisis component shall have five (5) [ten (10)] working days from the date of application to provide information necessary to complete the application.

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP depending upon the availability of funds:

(1) Applications for the subsidy component shall be accepted from households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits due to 100 percent disability beginning October 16, 1989 [17, 1988] and ending by October 27, 1989 [28, 1988].

(2) Applications for the crisis component shall be accepted beginning January 8, 1990 [9, 1989] and ending by April 27, 1990 [28, 1989].

(3) Applications shall be processed in the order taken until funds are expended. HEAP subsidy component shall be terminated when actual and projected component expenditures have resulted in utilization of available funds or October 27, 1989 [28, 1988].

(4) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation if additional federal funds are made available.

Section 9. Allocation of Funds. (1) Up to fifteen (15) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) Up to \$10,234,322 [9,677,341] of benefit funds shall be reserved for the crisis component. Eighty-five (85) percent of the funds reserved for the crisis component shall be allocated, by local administering agency, based upon the 1980 Census poverty levels of the counties served by the local administering agency. Fifteen (15) percent of the funds plus any additional funds made available from the subsidy component or from the Energy Assistance Trust Fund shall be held by the contracting agency as a contingency fund to be allocated to any local administering agency of the state chosen at the discretion of the contracting agency to provide low income home energy assistance in accordance with its contract. On February 5, 1990 [6, 1989], all unobligated allocations may be reallocated by the contracting agency with the concurrence of the Department for Social Insurance.

(3) Up to \$5,200,000 [5,900,000] of benefit funds shall be reserved for the subsidy component. Any funds remaining unobligated from the subsidy component may be made available under the crisis component.

(4) Up to \$300,000 of the contingency fund under subsection (2) of this section shall be reserved to assure component availability until March 15, 1990 [1989] for emergency crisis assistance for households who are without heat.

(5) Up to \$25,000 shall be reserved for the Preventive Assistance Program administered by the Department for Social Services to assist families with an energy payment not to exceed \$300 for each family if the payment shall prevent the removal of a child from a family or

if it shall assist in reuniting a child with the family.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy or services provided to eligible recipients shall comply with the following:

(1) Reconnection of utilities and delivery of fuel shall be accomplished upon certification for payment;

(2) The household shall be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer shall be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated worse than households not receiving benefits;

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households due to receipt of this payment.

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 10, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1989 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director

(1) Type and number of entities affected: This regulation is being amended to provide for the implementation and administration of the Home Energy Assistance Program (HEAP) in accordance with the federal fiscal year 1990 Low Income Home Energy Assistance Program (LIHEAP) Block Grant Application and Plan Narrative. HEAP shall have two components, subsidy providing home heating assistance for up to 49,400 low income elderly or disabled households and crisis providing home heating crisis assistance for up to 77,500 low income households experiencing a home heating crisis. The 23 local community action agencies shall locally administer the crisis component.

(a) Direct and indirect costs or savings to those affected: Eligible households under the subsidy component shall receive to the extent funds remain available an average home heating payment, estimated based upon previous experience, of \$105.26 per household. In the crisis component, a home heating crisis benefit of blankets, heaters, emergency fuel supplies, utility service, or heating system repairs shall be provided to eligible households to the extent funds remain available. The average value of crisis benefits per household is estimated at \$123.82. Administrative funds of up to ten percent of the crisis benefits provided shall be made available to reimburse local community action agency reasonable and allowable administrative costs.

1. First year: A total of up to \$17 million shall be available for benefits under HEAP. Up to \$5.2 million shall be allocated for subsidy and up to \$10.2 million for crisis. Up to \$1.02 million shall be available to reimburse crisis component administrative costs.

2. Continuing costs or savings: The LIHEAP block grant application and plan narrative is submitted annually and is based upon the estimated federal appropriation level. There will not be any continuing costs or savings under the amendments being made to the regulation in accordance with the requirements of the current state plan.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The Cabinet for Human Resources is not aware of any additional factors increasing or decreasing costs. This regulation has no effect on competition.

(b) Reporting and paperwork requirements: All HEAP applicants shall complete an application and provide materials to verify eligibility. The local crisis component administering agencies shall report services provided, submit invoices necessary for reimbursement and shall be subject to reporting and paperwork requirements necessary for appropriate administration of energy assistance programs including audits.

(2) Effects on the promulgating administrative body: The Department for Social Insurance shall be responsible for the overall administration of HEAP and shall administer directly the subsidy component.

(a) Direct and indirect costs or savings: Up to 10 percent of the LIHEAP block grant allocation (including energy assistance trust funds appropriated to LIHEAP by the 1988 General Assembly) and not transferred to another block grant may be used for administration.

1. First year: Normal costs associated with administration of this program and contract management shall be incurred.

2. Continuing costs or savings: There will not be any continuing costs or savings under the current state plan.

3. Additional factors increasing or decreasing costs: The Department for Social Insurance is not aware of additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Administrative requirements for grants under appropriate state and federal law and regulations shall be met. This includes maintenance of the state plan and regulation, revisions as necessary to manual and outreach material, computer system maintenance, annual reports, audits, and all such other usual and

normal administrative requirements for grants management.

(3) Assessment of anticipated effect on state and local revenues: The HEAP shall have little impact upon state or local revenues. Increased tax revenues will be generated from recipient expenditures for or receipt of energy assistance benefits. The expenditure for the state fiscal year 1990 energy assistance trust fund appropriation (\$3.4 million) will reduce the amount of funds invested in the Trust Fund and thus reduce the amount of interest revenues earned by the Trust Fund.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The regulation is being amended in accordance with the requirements of the federal fiscal year 1990 LIHEAP State Plan which was subject to substantial public review and comment, a legislative review and public hearing, and a Kentucky intergovernmental review through the Kentucky State Clearinghouse. As a block grant, LIHEAP provides flexibility within broad statutory guidelines. However, declining federal support, partially offset by an appropriation from the Kentucky Energy Assistance Trust Fund, limited alternatives since program criteria were already at a level to maximize the number of households assisted with the minimum amount necessary for a reasonable benefit. Various levels of funding for the two components were examined. Balancing a federal intent that funds be used for heating assistance with the need for adequate crisis assistance funding, the cabinet proposed the funding levels reflected in the state plan. The public review and comment supported the funding levels and agreed with continuing the restriction of subsidy component eligibility to the elderly and disabled as the most needy.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or governmental policy is in conflict, overlapping or a duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: No additional information or comment.

TIERING: Was tiering applied? Yes

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The regulation will affect cities which own and operate utilities for heating.

3. State the aspect or service of local government to which this administrative regulation relates. Municipal utilities.

4. How does this administrative regulation affect the local government or any service it provides? The provision of energy assistance benefits helps low income households pay for and maintain heat. Municipal utilities, and thus the cities, will benefit through reductions in the

amount of payments in arrears and through helping households to maintain service.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 97-35 as amended (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, as amended).

2. State compliance standards. This regulation specifies income eligibility at 110 percent of poverty. It also provides for local administration by community action agencies in the provision of heating crisis assistance.

3. Minimum or uniform standards contained in the federal mandate. The federal statute permits income eligibility to range between 110 percent and 150 percent of poverty. The statute requires that local administering agencies, which prior to enactment of the statute administered similar energy assistance programs be given priority for selection. The statute requires crisis assistance that is weather or supply related or other energy crisis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The block grant concept permits states flexibility within broad guidelines contained in the statute. In order to target assistance to the most needy, the state has adopted the minimum income eligibility criteria permitted under the statute. Other criteria designed to target benefits to the most in need are a resources test of \$5,000 and for noncrisis heating assistance, targeting eligibility to households with elderly or disabled members. The statute does not address benefit type or amount. This regulation sets the type and value of assistance at a level to provide a reasonable benefit to serve the maximum number of households with the available funds.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Due to the limited amount of funds and a need in excess of our ability to serve at the level of available funds, it is necessary to target assistance to those households most in need.

CABINET FOR HUMAN RESOURCES Department for Social Services (Proposed Amendment)

905 KAR 1:005. Operation of child placing agencies.

RELATES TO: KRS 199.011, 199.640, 199.650, 199.660, 199.670

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: This regulation is to carry out provisions of KRS 199.640. It serves to provide minimum standards for the operation of all child placing agencies.

Section 1. Staff. (1) In addition to requirements listed in 905 KAR 1:091, staff of all agencies which place children shall have one (1) member of the social work staff designated as placement director who shall hold a master's degree in social work, or a closely related field, or a bachelor's degree in social work, or a related field, and a minimum of two (2) years

experience in working with children and families including foster or adoptive placements.

(2) An agency using the service of a social worker not on the agency's staff shall determine that the social worker meets the qualifications as outlined in this regulation and 905 KAR 1:091. An agreement for this provision of service shall be on file at the agency and shall specify the qualifications of the social worker.

(3) All social workers shall be supervised by the placement director and trained according to the requirements listed in 905 KAR 1:091.

Section 2. Selection of Foster Placement. (1) The functions of recruitment and response to inquiries by prospective foster parent(s) shall be performed by social work staff. In no case shall an application be given without a personal interview.

(2) The agency shall be responsible for approving the home as acceptable for children based upon a study made of the home. The study shall be conducted in a series of planned interviews and home visits by the social worker. Each home shall obtain a minimum of three (3) written references showing approval of the home as acceptable for children. All children shall be placed in approved foster homes.

(3) The agency shall keep a written record of the findings of this study and the evidence on which these findings are based.

(4) The foster home study shall record personal interviews both joint and separate with all members of the household. All children in the family shall be included in the interview.

(5) To be approved, the foster home study shall determine that:

(a) All members of the household welcome a foster child into the home.

(b) The foster parent(s) are emotionally stable and mature people showing good potentialities for foster parenthood.

(c) The foster parents have the ability to accept the child's relationship with the child's natural parents.

(d) Family members have established constructive relationships outside the family.

(e) All members of the household are free from communicable disease as certified in writing by a licensed physician and in sufficiently normal physical and mental health to be able to provide necessary care for the child.

(f) Standards of housekeeping and cleanliness are acceptable.

(g) Physical standards of the home are those generally accepted as necessary for health and safety.

(h) The water supply and sanitation of the home shall comply with all requirements of local health authorities.

(i) Play space is provided, both in and out of doors, suited to the age and needs of the child.

(j) The home is accessible to the community resources that the child requires, such as schools and churches.

(6) An agency shall not have in placement more than two (2) children under two (2) years of age in the same home at the same time, except in a home maintained as a temporary shelter and limited to children under two (2) years of age. Sibling groups may remain together where practical. A further permissible exception shall be those homes where three (3) or more mature adults live regularly and the maximum number of infants shall not exceed three (3) at one time.

(7) A suitable home, where continuity of relationship can be maintained for the anticipated duration of placement shall be selected for the child. A foster home shall be selected for a particular child on the basis of suitability of the foster family and child for each other, taking into consideration the extent to which interests, strengths, abilities and needs of the foster family members enable them to understand, accept, and provide for individual needs of a specific child.

(8) The worker shall explain all terms of each placement and the foster parents shall be receptive of supervision from the agency. This shall be documented in the case record.

(9) At no time shall the total number of children including the foster parent's own children, exceed six (6) in number, except where the needs of the individual child would indicate otherwise such as sibling groups. Justification for any exceptions shall be documented in the record.

(10) No child shall be placed with persons normally resident in another state or permitted to go with such persons to take up residence in another state without prior notification to and authorization from the Kentucky Interstate Compact Administrator. (KRS Chapter 615 [208.600 to 208.670])

(11) Homes providing care of foster children shall not be used simultaneously for any other social services, such as day care center or home for the elderly. This shall not preclude foster parents being approved for adoption or adoptive parents being approved as foster parents.

(12) All homes in use shall be evaluated on a yearly basis. All homes not in use shall be reevaluated prior to use. A current reevaluation shall be completed on any approved home not in use prior to making a placement. The results of all evaluations shall be recorded in the case record.

(13) Each agency shall have a written agreement which shall state the responsibilities of agency and the foster parents with each foster home.

(14) The child shall participate in the intake process and in the decision that placement is appropriate to the extent that his age, maturity and adjustment, the nature of family relationships, and circumstances necessitating placement justify such participation.

(15) The agency shall maintain an ongoing orientation and training program for its foster families. Records of all orientation and training shall be maintained.

Section 3. Placement Process. (1) The social worker shall be responsible for developing a placement plan for each child. Such plan shall include the type and extent of services to be given the natural family in order to rehabilitate the home.

(2) The natural parent(s) and child shall be included whenever practical in developing the placement plan unless impractical to do so.

(3) The foster placement shall be located as near as possible to the natural parent's home to facilitate visiting.

(4) Each child shall have a period of preparation for the placement, unless unusual circumstances preclude such preparation. Such circumstances shall be documented in the case record.

(5) Preplacement visits by the child under

agency supervision shall be scheduled before final placement in the foster home, unless unusual circumstances, which shall be documented in the case record, preclude such visits.

(6) Prior to placement, meetings shall occur between worker and child for the purpose of establishing a relationship. The worker shall encourage and assist the child to express his feelings in order to facilitate his relationship with a foster parent(s) and other adults.

(7) Social services to the natural parent(s) and the child shall be adapted to their individual capacities, needs and problems. If parent(s) refuse social services, it shall be documented in the record.

(8) Planning for the child regarding matters such as visitation, health, and education shall be developed with the parent(s), the social worker, and foster parent(s) rather than directly between the parent(s) and the foster parent(s).

(9) Requests for a child's removal from a foster home shall be explored immediately and fully documented by the social worker.

(10) Preparation for a child's return to the natural family shall be supervised by a social worker. The natural family shall participate in planning for the child's return. If the child has not had regular contact with his natural family, plans for his return home shall include prior visits between the child and the family and at least one (1) preliminary visit of the child to his parent's home. In cases where the child is committed to the cabinet and when the parents reside a considerable distance from the agency, attempts shall be made for services to be provided in writing to the cabinet by the executive director of the agency. Provision shall be made for exchange of information quarterly, and whenever circumstances warrant.

(11) The agency shall provide for the semiannual review of all children in foster care, to assure that such care continues to be the best plan for each child.

Section 4. Supervision of Children in Foster Homes. (1) The agency shall maintain continuing supervision of the child and foster home while the child is in placement. The agency shall assure that the child is receiving care in accordance with his needs. The agency shall provide information to the foster parent(s) regarding the child's behavior and development.

(2) Upon placement of a child in a foster home the responsible worker shall make regular monthly supervisory visits to the home. During the first year of placement more frequent contacts may be required and these shall be provided by the responsible worker.

(3) If a review of the foster care plan at the end of the first year of placement indicates, supervisory visits may be less than monthly, but never less than quarterly. The number of contacts and the rationale shall be specified in the plan.

(4) The agency shall document every effort to see that the legal rights of parent(s) and the child are protected, and that the family ties are maintained between the child and his parent(s).

(5) Each child shall have clothing for his or her exclusive use, comparable in quality and variety to that worn by other children with whom he or she will associate.

(6) The agency shall be responsible for seeing

that children attend school in accordance with state school attendance laws.

(7) The agency shall secure psychological and psychiatric services, vocational counseling, and other services when indicated by the child's needs.

(8) When the plan for long term foster care for a child has been determined and justified, the plan shall be reassessed annually.

Section 5. Maintenance of Foster Care Records.

(1) The agency shall maintain records on each child and his family as well as on all foster families. These records shall show the reasons for any and all placement changes as well as steps taken to insure success.

(2) Social work staff shall document in case records the results of regular social service and progress toward goals which have been established for the child and family.

(3) Copies of all correspondence relating to the child shall be maintained.

(4) The date of discharge and the name and address of the person(s) [and/]or organization to whom the child is discharged shall be recorded.

(5) The discharge recording shall reflect the reason for the discharge.

(6) All case records shall be confidential in conformity with existing laws pertaining to confidentiality, KRS 199.430(3) and 199.640. 200 KAR 1:020 and KRS 61.878 also apply.

Section 6. Selection of Adoptive Placement.

(1) The agency shall select as adoptive parents applicants who are capable of providing for the child's care, support, education and character development.

(2) No placement of a child shall be made prior to the approval of a home as an adoptive home.

(3) The agency shall complete a written study of the adoptive home, which shall include the following:

(a) A personal interview, both joint and separate, shall be conducted with each member of the household.

(b) Worker's evaluation of the home situation.

(c) Minimum of three (3) written references.

(4) The written study of the applicant's home shall contain verification [verifies] that:

(a) All members of the household are acceptive of the placement of the child.

(b) The prospective parent(s) are emotionally stable and mature.

(c) All members of the household constitute a harmonious family group.

(d) All adult members of the applicant's family have obtained a medical examination. Any medical problems shall be discussed with the physician for any effect they may have on the family's ability to meet the needs of an adoptive child.

(e) Verification of the marriage of the applicant and of any previous marriages and divorces of each applicant has been verified.

(f) The applicants' economic circumstances are such that they can be expected to meet the needs of the child.

(g) The physical standards of the home provides for health, comfort and safety.

(5) Single persons shall be given consideration as adoptive applicants.

(6) Agencies shall clearly define the qualifications they require of prospective

adoptive applicant(s).

Section 7. Adoption Placement Process. (1) No child shall be placed for adoption until the parental rights of natural parents and/or alleged parents are terminated by a circuit court order in accordance with Kentucky Revised Statutes. (KRS 199.600 to 199.630)

(2) Parent's shall not be induced to terminate parental rights by a promise of financial aid or any other consideration.

(3) The authority granted to agencies licensed by the Cabinet for Human Resources authorizing them to place a child for adoption shall not be used to facilitate adoptive placements planned by doctors, lawyers, clergymen, and others outside the agency.

(4) A developmental history of the adoptive child and social history of the natural parents shall be obtained. Information shall be obtained from direct study and observation of the child by the social worker, pediatrician, foster parent(s), and if indicated, by the nurse, psychologist and other consultants.

(a) The child's developmental history shall include as much of the following as is available: birth and health history; early development; child's characteristic way of responding to people and situations; deviations from the range of normal development; the experiences of the child prior to the decision to place him for adoption, particularly maternal attitudes during pregnancy and early infancy, continuity of parental care and affection, foster care placements, and separation experiences.

(b) Information shall be obtained from natural mother and father about their family background such as name, age, nationality, education, religion, occupation, and information to determine whether there are any significant hereditary factors or pathology, including illnesses of the natural mother or father, that may affect the child's normal development.

(c) If the child is born out of wedlock, the agency placing the child shall make clear to the mother the importance of having as much information as possible on the natural father of the child in order to establish the child's probable hereditary endowment. Sufficient information shall be obtained as to the natural father for purposes of termination of the father's parental rights.

(5) A medical examination shall be made by a licensed physician to determine the state of the child's health, significant factors that may interfere with normal development, and the implications of any medical problems.

(6) Before placement of the child, conditions under which adoptive parent(s) accept the child shall be agreed upon. This written agreement shall embody the following provisions:

(a) The adoptive parent(s) agree to file an adoptive petition at a time agreed to by the agency in accordance with state law. (KRS 199.470)

(b) The adoptive parent(s) agree to permit supervision by the agency during the period of time preceding the final judgment by the circuit court.

(c) The agency is responsible for providing the adoptive parent(s) with information regarding the child's background and current behavior. The identity of the birth parents shall not be divulged.

(d) The adoptive parent(s) and the agency agree that the child may be removed from the family at the request of either party at any time before the filing of the final judgment.

(7) Preplacement meetings shall be arranged for the adoptive parent(s) and any child one (1) year of age or older.

(8) When preparing the child for the selected adoptive parent(s), the agency shall discuss with the child his readiness to accept this placement.

(9) Siblings who have had a relationship with one another shall be placed together unless it is determined that it would be more beneficial for them to be placed in separate homes. When siblings have been separated in placements, the case record shall reflect a valid basis for the separation.

Section 8. Supervision of Adoptive Homes. (1) The agency placing a child shall remain responsible for him until the adoption has been granted. This responsibility involves at least the following:

(a) Two (2) meetings by the worker with the child and the family, one (1) of which shall be in the home before the granting of the adoption judgment.

(b) Awareness of changes in the adoptive family including health, education, and behavior.

(2) Upon request of the Cabinet for Human Resources, the agency shall provide all information as required in KRS 199.510 which is necessary to report to the court in order to proceed with the adoption. Upon the request of the cabinet, the agency placing the child shall file the report to the court as required by KRS 199.510.

(3) In the event of an agency placement of a child for adoption, and upon review of the petition of the adoptive parent(s), the court finds the adoptive parent(s) to be unsuitable and thereby refuses to grant a judgment, the agency shall remove the child from the home and place the child elsewhere.

Section 9. Maintenance of Adoptive Case Record. (1) The agency shall maintain a case record of each child accepted for care, of his family and of each adoptive applicant, from the time of the application for services through the completed legal adoption and termination of agency service.

(2) Records shall contain material on which the agency decision can be based. The case record shall have information and documents needed by the courts, and shall preserve information about the child and his family.

(3) The records shall include a narrative or summary of the services provided. The records shall also contain copies of all legal and other pertinent documents.

(4) The case record of each child placed for adoption shall include all information gathered during the intake study in addition to the following:

(a) A description of facts about the child's family situation which necessitated placement of the child away from his family and/or termination of parental rights.

(b) A certified copy of the order of the circuit court committing the child to the agency for the purpose of adoption.

(c) Verification of the child's birth record and the registration number of same.

- (d) A copy of the child's medical record up to the time of placement.
- (e) A copy of the required study of the adoptive home.
- (f) Date of placement in the adoptive home.
- (g) A statement of the basis of the selection of this home for the child.
- (h) A record of after-placement services with dates of contacts and observations made.
- (i) Dates of filing of petition and granting of judgments and other significant court proceedings relative to the adoption.
- (j) Child's adoptive name.
- (5) Where there is need to share background information with one of the parties to a completed adoption, or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the agency shall have the right to make proper disclosure in accordance with laws of confidentiality (KRS 199.570).
- (6) Records on adoption which contain pertinent information shall be maintained indefinitely following final placement of a child. Each individual record shall be sealed and secured from unauthorized scrutiny.

LARRY MICHALCZYK, Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 10, 1989

FILED WITH LRC: October 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1989: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Gibson

(1) Type and number of entities affected: Programs affected are 25 licensed private child-placing agencies who make foster care and/or adoptive placements. In order to be licensed, such agencies must meet minimum standards of operation and care, as set forth in these standards.

(a) Direct and indirect costs or savings to those affected: Proposed amendments will not result in indirect costs or savings to entities affected.

1. First year: Proposed amendments will not result in indirect costs or savings to entities affected.

2. Continuing costs or savings: Proposed amendments will not result in indirect costs or savings to entities affected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are not other factors affecting cost nor will these amendments have any effect on competition.

(b) Reporting and paperwork requirements: The amendments will not increase or decrease existing paperwork requirements.

(2) Effects on the promulgating administrative body: These amendments will not have any effect on the Department for Social Services.

(a) Direct and indirect costs or savings: These amendments will not result in increased costs or savings to the Department for Social

Services.

1. First year: These amendments will not result in increased costs or savings to the Department for Social Services.

2. Continuing costs or savings: These amendments will not result in increased costs or savings to the Department for Social Services.

3. Additional factors increasing or decreasing costs: There are no anticipated factors that will increase or decrease costs of care or services.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated increase or decrease on local or state revenues as a result of these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as statutes require the cabinet to monitor and regulate private child-caring agencies.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or policy in conflict.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation or policy in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This does not apply as no conflict exists.

(6) Any additional information or comments: There is no additional information which is relevant to this regulation.

TIERING: Was tiering applied? No. This regulation is applicable to the child-placing program statewide, which includes all agencies licensed by the Cabinet for Human Resources. This regulation establishes requirements for those facilities, institutions or agencies which provide adoption and foster care services. To tier would be to provide unequal treatment to those facilities in the same class, thus raising questions of a constitutional nature.

CABINET FOR HUMAN RESOURCES Department for Social Services (Proposed Amendment)

905 KAR 1:065. Operation of child care institutions.

RELATES TO: KRS 199.011(6), (7), (12), 199.640, 199.650, 199.660, 199.670

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: This regulation is necessary to carry out the provisions of KRS 199.640. It serves to provide minimum standards for the operation of child caring institutions.

Section 1. Staff. (1) Social work staff.

(a) Each facility shall have a full-time social work supervisor responsible for the total program of social services to families and children. The supervisor shall have at least a bachelor's degree in social work or a related field and two (2) years experience in social case work. The maximum number of workers which one (1) shall supervise is seven (7). In an institution serving no more than forty (40)

children and their families, the responsibilities of social work and supervision may be carried by the same staff member. In instances where the supervisor is personally providing social services, the maximum of forty (40) cases shall be reduced by six (6) for each worker supervised.

(b) Social workers employed by the institution shall carry responsibility for case work services with children and families. All workers providing social services shall have a minimum of a bachelor's degree in social work or a related field, or high school graduation with five (5) years' experience in the provision of social services.

(c) The number of children assigned to individual social work staff shall be limited so that effective service for each child and his family can be provided. In no case shall a social worker with minimum qualifications serve more than thirty (30) children and their families.

(2) Child care staff.

(a) The child care staff shall be responsible for daily care and nurturing living experiences of a specified group of children.

(b) Child care workers shall be selected through a process of assessing their previous experience in working with children. This shall include personal interviews and references.

(c) Child care staff shall be required to have training or experience in the care of infants and preschool children before being allowed to work with this age group. There shall be at least one (1) staff person in attendance for every three (3) infants and one (1) staff person in attendance for every five (5) preschool children. At least one (1) staff member shall be available within twenty-five (25) feet of the infants' sleeping area during sleeping hours.

(d) For preschool and school age children, there shall be a minimum of one (1) house parent per sleeping area whether cottage or dormitory floor during nighttime hours. During other than sleeping and school hours, the staff-child ratio shall not exceed one (1) staff to twelve (12) children. The staff-child ratio in both incidences include children other than those served by the agency.

(e) No child care staff person shall work more than six (6) consecutive days without at least twenty-four (24) consecutive hours off.

(3) Support staff.

(a) A consulting pediatrician or physician shall be on call.

(b) For infants with medical problems [and/or] physical disabilities, there shall be a minimum coverage of four (4) hours daily by R.N. or L.P.N. with training or experience in care of infants. Additional hours of coverage shall be required depending upon the number and extent of the infants' medical problems and [or] physical disabilities.

(c) The services of a dietician or nutritionist shall be available for consultation in menu planning and in meal preparation as well as food purchasing. Formulas and diets should be prepared by trained staff under the direction of the physician. A record shall be maintained of consultation provided along with recommendations and implementations. There shall be cooks and kitchen personnel to operate the food service program so that meals can be served for all children at the same time.

(d) Opportunities for all children to

participate in supervised recreation activities shall be scheduled at times convenient for the children. During weeks when school is not in session, there shall be a minimum of two (2) hours a day of planned and supervised activities. Community resources shall be utilized whenever possible to allow for choices in activities and for diversification in the program. There shall be a staff member designated as recreation coordinator. Planned and supervised recreational activities shall be recorded and kept on file.

(e) Staff shall be employed in sufficient number to carry on the everyday housekeeping and maintenance of buildings and grounds. These employees shall be provided with ongoing opportunities for training related to the child care program as well as specific job duties.

(f) Secretarial staff shall be employed to perform secretarial and clerical duties, including maintenance of records, correspondence, and bookkeeping. Office staff shall be oriented to the goals of the agency and to the confidential nature of the job.

Section 2. Physical Facilities. (1) The buildings shall be of sound construction and suitable for residential use. New buildings shall have bedrooms for living quarters with not more than four (4) occupants in each bedroom. An existing building which is in need of remodeling shall [must] be brought into compliance with all building safety codes.

(2) The buildings shall be adequate in size to provide ninety (90) square feet for each child for sleeping and personal living activities.

(3) The building shall be so constructed that it is dry, adequately heated, ventilated, and lighted; that windows, doors, stoves, heaters, furnaces, and pipes are protected; that screening is provided on windows and doors which are left open; and that floors are free from splinters and easily cleaned. All stoves, heaters, furnaces and gas water heaters shall be adequately ventilated.

(4) The facility and grounds shall be maintained in good condition.

(5) There shall be an indoor recreation area provided. It shall have comfortable furnishings and sufficient equipment for the number of children and adults using it at any one (1) time.

(6) Each living unit shall have a living room where children can gather at any time for quiet reading and study, general relaxation or entertaining.

(7) Each sleeping unit in an institution (i.e. dorm floor, cottage) shall have a minimum of one (1) complete bath facility. There shall be separate bath facilities for boys and girls as well as staff. These bath facilities shall provide one (1) toilet, one (1) lavatory, and one (1) tub or shower for each eight (8), six (6), and ten (10) children respectively.

(8) Bedrooms shall be equipped with a bed for each child, adequate in size, with suitable springs, mattress, pillow, and bedding. There shall be separate sleeping quarters for boys and girls over age five (5). Each child shall have individual drawer space and closet space.

(9) All bed linen shall be changed at least once a week, or more often if necessary. Each mattress shall have a waterproof covering.

(10) Clothing, linens, household furnishings, and equipment shall be kept in good repair.

Section 3. Health and Safety. (1) Every institution shall have policies and procedures regarding health and medical care which shall be approved by a licensed physician. If services of a medical doctor are not available in the community, the institution shall request the assistance of the county health department or the Cabinet for Human Resources, Department for Health Services, Growth and Development Branch, Frankfort, Kentucky, in obtaining such professional services.

(2) Every institution shall make provision for prompt medical care in cases of illness and emergencies, and for diagnosis and treatment of any physical illness or handicap.

(3) Staff members responsible for the care of ill children shall receive training in proper handling and use of medicines and prescriptions.

(4) Each child shall receive a thorough physical examination annually under supervision of a licensed physician or at more frequent intervals as recommended by the physician. A record of the annual examination shall be on file at the institution. Treatment of correctable defects upon doctor's recommendations shall be required.

(5) A separate health record shall be maintained for each child. The record shall contain a report of the admitting physical examination and recommendations, previous and continuing health and medical history, including illnesses while under care, hospitalization and surgery.

(a) There shall be kept records and[/or] reports of tests, immunizations, periodic reexaminations and recommendations.

(b) The health record shall have reports of dental examinations and treatments, showing dates and by whom given.

(c) A signed parental authorization for regular and emergency medical and surgical care, for immunizations, and for hospitalization when indicated, shall be on file in the medical record.

(d) Health records shall be kept in a place where they are readily available to physician, nurse, and designated staff.

(e) At time of discharge, appropriate medical information of the institution shall follow the child.

(6) Each child shall be provided medication, or articles of special need as his health warrants.

(7) Provision shall be made and procedures established for hospitalization of children when required, through arrangements with an accredited hospital.

(8) Every child age two (2) years and above shall be examined at least once a year by a licensed dentist, and more frequently if indicated.

(9) The institution shall make provision for dental examination as soon as practical after acceptance of child for care; for treatment, including necessary prophylaxis, orthodontia, repairs, and extractions when indicated; and for annual reexaminations.

(a) The schedule for examination, prophylaxis, orthodontia, and other treatment shall be planned by the dentist together with medical, casework, and child care staff.

(b) At time of discharge, the child's current dental record shall be made available to the parents or to other persons responsible for planning for future care of the child.

(10) The agency shall document all information required in subsections (1) through (9) of this section.

(11) Adequate measures shall be taken to remove safety hazards and to prevent accidents and documented through written policies and procedures.

(a) Active sports shall be supervised by staff capable of handling emergencies. If the institution has a swimming pool, the presence of a Red Cross certified lifeguard shall be required whenever children swim.

(b) Children with physical handicaps shall be protected through appropriate and specific safety measures.

(c) All children shall be periodically instructed in fire prevention. Matches, open flame, or combustible materials shall be used by children only under direct supervision of staff.

(d) Children and staff shall be given instructions about what to do in case of fire or other emergencies, and drills shall be performed monthly and documented.

(12) The water supply shall be from an approved source, adequate in supply, properly protected and satisfactorily treated and under ample pressure for distribution. Approved drinking fountains conveniently located are required. All current laws and regulations regarding testing of water wells shall be adhered to.

(13) All plumbing and waste disposal systems shall comply with state plumbing standards and applicable state laws and regulations regarding waste disposal systems.

Section 4. Nutritional Requirements. (1) All children shall be served nutritious meals meeting the dietary allowances of the Food and Nutrition Board of the National Research Council, which include foods from the four (4) basic food groups. Adequate amounts shall accommodate the needs of the children as to age, sex, and activity of each child in care.

(2) With variations in appetite taken into account, children shall be encouraged to eat the food served, but shall not be subjected to any coercion.

(3) All foods served to a child on a modified diet as prescribed by a physician shall adhere to the dietary regulations as stated. This shall be planned by a dietician and observed to see if it is being properly done.

(4) A dietary policy and procedure manual shall be maintained and available to food service personnel. This shall be developed with the guidance of a dietician.

(5) Menus shall be planned at least one (1) week in advance and shall then be dated, posted, and kept on file for one (1) year.

(6) At least three (3) meals a day shall be served at regular intervals, except when children receive their morning and[/or] noon meal(s) at school. No more than fourteen (14) hours shall lapse between the evening and morning meals.

(a) Nourishing between meal snacks shall be provided and may be part of the daily food needs, but they shall not replace regular meals. Such snacks shall be recorded on the menu.

(b) In menu planning, provisions shall be made for religious, ethnic, and cultural differences of the children served.

(c) Special times shall be set aside so that meals are not hurried, in order that meal time

be a happy, social experience with time allowed for conversation and unhurried eating.

(d) Children shall not be deprived food on the menu as punishment nor given such food as a reward. Any food used as a reward shall be over and above that specified in the facility's menu.

(e) All milk and milk products utilized in an institution shall be obtained from sources approved by the Cabinet for Human Resources.

(f) Only pasteurized milk and U.S. Government inspected meat shall be served to the children.

(g) Cool, potable drinking water shall be available for all children at all times.

(h) Foods shall be prepared by appropriate methods that will preserve their nutritive value and heighten their flavor and appearance.

(i) Children and staff members who eat with them shall be served the same food except for tea and coffee, unless differences in age or special dietary needs are factors.

(7) Food service shall be planned to promote physical, social, and mental development.

(a) Table service shall be provided for all those capable of eating at a table in a manner to best serve the interest of the children. Tables and chairs shall be heights appropriate to the size of the children served. They shall be constructed of material that can be easily sanitized.

(b) Children who have not had opportunities to learn how to handle food with the usual table service shall be managed in such a way that they will not be embarrassed or subjected to ridicule of other children.

(8) All persons handling food shall wear clean outer garments, hairnets, or other appropriate covering and shall keep their hands and fingernails clean at all times while handling food, drink, utensils, or equipment.

(9) Each child caring institution shall have on file a certificate for each employee associated with food preparation or service from a health officer or a licensed physician, stating that the employee has been examined and found not to be suffering from any disease in a communicable stage. Such certificate shall be dated at the time of hiring and shall be renewed annually.

(10) [Maintenance of sanitary conditions is essential:] Written reports of all sanitary inspections by municipal, county, or federal authorities shall be kept on file at the institution. The sanitation of facilities shall meet all local, state, and federal regulations.

(11) In those instances where an agency subcontracts food services, the above regulations shall apply to the grantee in terms of health and sanitation.

Section 5. Social Services. (1) All children and their families served by any child caring institution shall be provided social services. If any family refuses such service, it shall be noted in the child's record.

(2) Every institution shall maintain in writing a clearly defined statement of intake policies and procedures, specifying the age and type of client which shall be accepted for admission.

(3) Infants and children of preschool age and those of any age with developmental disabilities, shall not be placed in an institution unless all other resources, parents, relatives, guardians, adoption care and foster care have been explored. Sibling groups may be

placed in an institution whereby such groups remain together provided all other resources have been exhausted.

(4) The institution shall obtain information, if available, from other public or private institutions or agencies which have had contacts and/or currently working with the child or his family. In cases where two (2) or more agencies are providing services to a family, there shall be coordination of such efforts to avoid duplication. The coordinated plan shall be filed in the child's record. The family shall be advised of who the assigned worker(s) is and how to contact that person.

(5) An agreement designating the services each shall render shall be signed between the institution and other persons or agencies sharing responsibility while the child and his/her family are under the institution's care.

(6) In an instance where a family voluntarily places a child[children] with a child caring institution, social services shall be provided by the agency to both child and family on a regularly scheduled basis.

(7) In the case of a child committed to the cabinet and where placement in the institution is made by the cabinet, the following shall apply:

(a) An agreement as to services to be provided by each party shall be in writing. In instances where an agency social worker serves the child and a cabinet worker serves the family, provision shall be made for regular exchange of information at least quarterly, and whenever a change in the child's situation occurs or the circumstances warrant.

(b) Periodic reviews of the child's plan shall [will] be held, at least semiannually, and shall involve all interested parties.

(8) If services of another agency are deemed necessary, there shall be in writing provision for exchange of information between that party and the agency responsible for the child. In the case of a child committed to the cabinet who is referred, the agency social worker shall consult with the departmental worker before making such referral.

(9) Within six (6) months after admission, the written service plan for each child placed in an institution shall be reviewed. All persons or agencies having an interest in the child shall be notified in writing of the review and given an opportunity to participate.

(10) Assignment of cases to the social worker shall be determined by the service plan formulated for the child and family at the time of intake and admission.

(11) Contacts with the family, both at the institution and in the family home, shall be scheduled on a regular basis. These contacts shall be recorded.

(12) The institution shall make every effort to have the parents participate in the service plan. The institution shall document such efforts and results thereof.

(13) The institution shall involve the child in the plan to the extent consistent with the child's age and understanding. The institution shall document methods used to involve the child in the service planning.

(14) When case planning calls for permanent separation, the institution shall help the family and child handle their feelings regarding permanent separation and efforts shall be

recorded in the case record.

(15) The nature of any problem behavior displayed by both child and parents shall be recorded in the case record.

(16) At least bimonthly staff conferences shall be held to evaluate the adjustment of the child and the family. At this time, decisions regarding continued treatment, management, and modifications of behavior, visitation, and future planning shall be considered and shared with the family. This shall be recorded in the case record.

(17) When appropriate, the institution shall be responsible for referring parents to other resources in the community, such as psychiatric and/or medical clinics, group work services, or relief giving agencies.

(18) Visiting on and off the campus shall be arranged by the institution. No child shall be permitted to visit in any home until the suitability of the home has been determined by the institution through documented study and observation. Visiting in the natural home and homes of relatives shall be encouraged where consistent with the service plan.

(19) The institution shall be responsible for preparing the family for the return of the child into the home when this is the service plan. If services to the family are being provided by another agency, both social workers concerned shall consult to determine procedures and responsibilities.

(20) In addition to the general requirements for case records outlined in 905 KAR 1:091, the following requirements shall also be met:

(a) A record shall be kept of all supervisory and casework contacts with the family and child. These shall reflect the goals outlined in the treatment plan and should reveal the progress towards these goals or support the need for new treatment plan conferences. Regularly scheduled appointments by casework staff shall document ongoing casework services for child and family.

(b) The record shall reflect updated addresses of all family members, especially both parents, when known.

(c) Copies of all correspondence related to the child shall be maintained. This shall include[s] copies of correspondence to families, other interested persons, and to all organizations.

(d) There shall be a record of any aftercare services provided the child or family.

(e) The date of discharge and the name and address of the person or organization to whom the child is discharged.

(f) The discharge record shall reflect the goals originally planned which have been met as well as those not met. For those goals not met, barriers which prevented their completion shall be recorded. Any change of goals shall be noted along with their state of completion at discharge.

(g) There shall be ongoing record maintenance provided to assure all records are updated and that all information necessary to the performance of the individual treatment program, eligibility status of the child, and the necessary authorization for child care are on file. Outdated material shall be disposed of in a manner which insures maintenance of confidentiality.

(h) All case records shall be considered confidential and treated in accordance with existing laws pertaining to confidentiality, KRS

199.430(3) and 199.640(4); 200 KAR 1:020 and KRS 61.878 also apply.

Section 6. Program. (1) Work assignments.

(a) Each child shall be given daily or weekly chores, assigned in accordance with his age, health, interests, ability, and readiness, so that he may [can] learn to assume responsibility and get satisfaction from contributing to work of a useful nature.

(b) Children shall participate in selection of assignments and shall have a chance to become familiar with a variety of tasks. They shall be apprised why the work must be done and be able to get a sense of achievement and recognition for their contribution.

(c) Chores shall be similar to those of children in typical families in the neighboring community.

(d) Children shall not be depended upon to do day-to-day work for which staff shall be employed.

(e) Work or chore assignments shall not be used as a form of punishment.

(f) Children may be given jobs for which they receive payment, which shall be clearly differentiated from duties expected of any child in relation to the routines of daily living. Any money the child earns shall belong to him for his own use. Work shall be done in compliance with child labor laws and paid for in accordance with community rates. Children shall not be exploited for their labor.

(g) Each institution shall keep written records of chore assignments and job schedules of all children.

(2) Personal possessions.

(a) Each child shall be allowed to bring personal possessions with him to the institution and to acquire belongings of his own to the degree that such possessions contribute to a sense of autonomy and identity.

(b) If an allowance is given, it shall be scaled to the child's age and similar to what other children in the community receive. There shall be no restrictions placed on use of such monies.

(c) Such allowance shall not be withheld as punishment; however, reasonable deductions may be made in such allowances upon agreement of the child in cases where damages have occurred by the child.

(3) Clothing.

(a) Each institution shall provide every child with an adequate supply of clothing similar in appearance and quality to that worn by typical children in the community.

(b) Donated clothing shall be selected with utmost care to avoid use of shoddy, soiled garments or outmoded styles.

(c) Children's shoes shall be checked regularly to assure correct fit. Whenever replacement of shoes is necessary, children shall be individually fitted with new shoes.

(d) All clothing shall be marked with the child's name or otherwise identified.

(4) Personal hygiene. Every institution shall maintain a continuous program of personal hygiene to include the following:

(a) Staff shall train the children to develop acceptable standards of modesty and respect for the privacy of others.

(b) Each child shall be provided his own articles of personal hygiene such as toothbrush, comb, hairbrush, washcloth, towel, razor,

toothpaste, shaving cream, and deodorant.

(5) Daily activities.

(a) The daily program for preschool children shall include a variety of creative activities, such as art, music, dramatic play, stories, books and block building; indoor and outdoor play in which children make use of both small and large muscles; opportunities for solitary or group play, for the child to choose activities, and for learning self-help procedures. There shall be sufficient toys and equipment to provide the variety of experiences listed above.

(b) Daily program activities shall be provided with emphasis on the child's physical, intellectual, emotional, and social growth. Individual needs and developmental levels of the children in care shall be documented.

(c) Each child's birthday shall be celebrated.

(d) Traditional holidays shall be celebrated in a fitting manner.

(e) Children shall have access to a daily newspaper and to magazines suitable for the age group served.

(f) Each institution shall allow each child to maintain a personal and private accumulation of items as a means of preserving individuality as distinct from group personality.

(6) Religion.

(a) The religious beliefs and rights of children shall be respected.

(b) The institution shall cooperate with groups willing to provide opportunities for the child to have an appropriate religious affiliation and religious experience, based on the agreement as signed by the parent(s) or legal guardian at the time of admission.

(c) Children shall be encouraged to participate in religious activities but shall not be coerced or expected to participate in an activity when this would not be in the best interest of the child.

(7) Education.

(a) All children of school age shall attend an accredited school.

(b) If children attend school at the institution, the educational program shall conform to the requirements of the State Cabinet of Education. Teaching staff shall be certified as provided under KRS 161.030.

(c) Sufficient time and appropriate facilities shall be provided for quiet study after school hours.

(8) Sex education.

(a) Children shall be given accurate and appropriate information about sex and shall be helped to develop desirable attitudes and standards regarding sexual behavior.

(b) Children shall be provided an opportunity to discuss the questions they have, their anxieties and concern about matters such as masturbation, menstruation, marriage, and family life.

(9) Discipline.

(a) Disciplinary methods shall be designed and implemented through positive guidance to help the individual child develop self-control and assume responsibility for his acts. The facility shall establish simple and consistent rules both for children and staff that set the limits of behavior.

(b) The seclusion of a child in a locked room shall be prohibited except in institutions providing an in-depth treatment-oriented child care program for adjudicated delinquents when a security room is provided.

(c) No child shall be separated from the group any longer than is required to produce a therapeutic effect.

(d) In no instance shall harsh, cruel, unusual punishment or demeaning and humiliating discipline be used. This shall include[s] the use of spanking, paddling, or slapping a child. Extreme misbehavior shall be dealt with in other more acceptable forms of discipline. (The abuse statutes KRS 620.030, 620.040, 620.050, and 620.990 [199.335, 208.020(4) and (5) and 208.990(5) and (6)], or their successor statutes shall be observed.) In no incidences shall the child be subjected to harsh or corporal physical discipline nor shall any method of discipline be used that is threatening, shaming or frightening. Loud and profane or abusive language shall not be used.

(e) Children shall not be denied food which is necessary for daily nutritional requirements or forced to eat any food as a means of discipline.

(f) No child shall be forced to participate in any group exercises or activities as a punitive measure.

(g) Children placed in a time-out area shall be in sight or sound of an adult at all times and shall be checked at intervals by the child care worker making the decision to use such a room.

LARRY MICHALCZYK, Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 10, 1989

FILED WITH LRC: October 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1989: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Gibson

(1) Type and number of entities affected: Programs affected are 41 licensed private child-caring institutions providing care for dependent/neglected children or those children adjudicated by the courts as status or public offender. This regulation establishes minimum standards of operation for such facilities.

(a) Direct and indirect costs or savings to those affected: Proposed amendments will not result in indirect costs or savings to entities affected.

1. First year: Proposed amendments will not result in indirect costs or savings to entities affected.

2. Continuing costs or savings: Proposed amendments will not result in indirect costs or savings to entities affected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are not other factors affecting cost nor will these amendments have any effect on competition.

(b) Reporting and paperwork requirements: The amendments will not increase or decrease existing paperwork requirements.

(2) Effects on the promulgating administrative body: These amendments will not have any effect on the Department for Social Services.

(a) Direct and indirect costs or savings: These amendments will not result in increased costs or savings to the Department for Social Services.

1. First year: These amendments will not result in increased costs or savings to the Department for Social Services.

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3. Additional factors increasing or decreasing costs: There are no anticipated factors that will increase or decrease costs of care or services.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated increase or decrease on local or state revenues as a result of these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as statutes require the cabinet to monitor and regulate private child-caring agencies.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or policy in conflict.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation or policy in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This does not apply as no conflict exists.

(6) Any additional information or comments: There is no additional information which is relevant to this regulation.

TIERING: Was tiering applied? No. This regulation is applicable to the child-caring program statewide, which includes all agencies licensed by the Cabinet for Human Resources. This regulation establishes requirements for those facilities, institutions or agencies which provide institutional child care. To tier would be to provide unequal treatment to those facilities in the same class, thus raising questions of a constitutional nature.

**CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)**

905 KAR 1:071. Group homes for foster children.

RELATES TO: KRS 199.640 to 199.670

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The necessity of this regulation is to carry out the provisions of KRS 199.640 to 199.670. It shall be used in conjunction with other applicable regulations promulgated under this chapter. It functions to establish minimum standards for group homes whose stated purposes is to serve foster children.

Section 1. Staffing. (1) In instances where the group home operates under auspices of a licensed facility or agency the executive director of that facility or agency may also be

director of the group home provided written documentation of time spent serving each facility verifies that duties delineated in 905 KAR 1:091, Section 2, have been adequately performed.

(2) The staff to child ratio shall be one (1) child care staff member for each four (4) children when the children are in the home. (See Section 7(2)(a) of this regulation for exception.) At no time shall children be left without supervision.

(3) The group home shall make provision for relief personnel. No staff member shall work more than six (6) consecutive days without at least twenty-four (24) consecutive hours off.

Section 2. Physical Facilities. (1) The group home shall have access to schools, churches, shopping facilities, and other community resources.

(2) The group home shall be of sound construction, and suitable for residential use.

(3) Each child shall have a minimum of ninety (90) square feet of personal living space exclusive of kitchen, hallways, offices, baths, storage areas, recreation areas, and dining areas.

(4) The building shall be dry, adequately heated, ventilated, and lighted; windows, doors, stoves, heaters, furnaces, pipes, and ventilating fans shall be protected; screening shall be provided for windows and doors; and floors shall be free from splinters and easily cleaned. All types of gas heaters and stoves shall be properly ventilated.

(5) A recreation area with comfortable furnishings in sufficient quantity to accommodate the number of children and adults using it at any one time shall be provided.

(6) Bedrooms shall be equipped with a bed for each child, of adequate size, with suitable springs, mattress, pillow, and bedding as well as adequate closet space and individual drawer space for each child.

(7) There shall be separate sleeping quarters for boys and girls over five (5) years of age.

(8) There shall be separate toilet and bath facilities for boys and girls.

(9) The dining area shall be large enough to permit all children to eat at the same time. All tables and chairs in the dining room shall have surfaces that are clean and free of cracks.

(10) The facility and grounds shall be well maintained.

Section 3. Medical and Dental. (1) Every group home shall have a licensed physician on call to attend to emergency medical needs of children.

(2) All medical and dental needs of children shall be met either by referral or by agreement with a licensed physician or dentist.

(3) Every child admitted to a group home shall have a health maintenance program established and implemented.

(4) Each child shall have a physical examination annually under the supervision of a licensed physician or at more frequent intervals as recommended by the physician with special emphasis on dental, eye, ear and orthopedic conditions of the child.

(5) The treatment of correctable defects upon a physician's recommendation shall be required.

(6) Each child shall be provided medication, or articles for special needs as his health warrants. All medications administered by child

care staff shall be on orders of a licensed physician. Staff members responsible for care of ill children shall be instructed in the use of medicines and prescriptions by the licensed physician ordering the medication.

Section 4. Nutrition. (1) All children shall be served nutritious meals meeting the dietary allowance of the Food and Nutrition Board of the National Research Council, which include foods from the four (4) basic food groups. Adequate amounts shall accommodate the needs of the children as to age, sex, and activity of each child in care.

(2) Children shall be encouraged to eat the food served.

(3) All foods served to a child on a modified diet as prescribed by a physician shall adhere to the dietary regulations as stated.

(4) At least three (3) meals a day shall be served at regular intervals except when children receive their morning and/or noon meal(s) at school.

(5) No more than fourteen (14) hours shall lapse between the evening and morning meals.

(6) Nourishing between-meal snacks, recorded on the menu, shall be provided and may be part of the daily food requirements, but shall not replace regular meals.

(7) In menu planning, provisions shall be made for religious, ethnic, and cultural differences of the children served.

(8) Sufficient time shall be allotted for meals so that the eating of meals is not hurried.

(9) No child shall be denied food which is necessary for daily nutritional requirements or forced to eat any food as a means of punishment.

(10) All milk and milk products utilized in a group home shall be obtained from sources approved by the Cabinet for Human Resources, and shall be pasteurized.

(11) Cool, potable drinking water shall be available to all children at all times.

(12) Foods shall be prepared by appropriate methods that will preserve their nutritive value and heighten their flavor and appearance.

(13) Children and staff members who eat with them shall be served the same food unless differences in age or special dietary needs are factors.

(14) Food service shall be planned to promote physical, social and mental development.

(a) Table service shall be provided for all those capable of eating at a table in a manner to best serve the interest of the children. Tables and chairs shall be at heights appropriate to the size of the children served. They shall be constructed of material that can be easily sanitized.

(b) Children who have not had opportunities to learn how to handle food with the usual table service shall be managed in such a way that they will not be embarrassed or subjected to the ridicule of other children.

(15) Menus shall be planned at least one (1) week in advance, dated, posted and kept on file for one (1) year. Any substitution that is made shall be recorded.

Section 5. Social Services. (1) All children and their families shall be provided social services either by qualified staff of the facility or by referral. If the family refuses such services, this shall be documented in the child's record.

(2) If social services are provided by referral, the executive director, or his designee shall obtain a written agreement from a social service agency which shall [will] provide the social services specified in the general regulations. A copy of this agreement shall be included with the application and any changes in this agreement shall be reported immediately to the Cabinet for Human Resources, Office of Inspector General [Administrative Services], Division for Licensing and Regulation.

(3) In the event social services are provided by referral, the case records shall be kept by the agency providing services.

(4) Planning for each child shall take into account his legal relationships to individual adults and agencies providing care for him.

(5) Whether social services are provided by the agency or by referral the following provisions shall be met:

(a) There shall be a sufficient number of qualified staff to perform effectively the tasks required in providing the total service for the children accepted for care and for their parents.

(b) The maximum number of children (with their parents), that shall be served by a full-time caseworker shall be eight (8).

(6) There shall be a written social service plan for each child that shall state [which states] the problem(s), strategies for solving the problem(s) and goals to be achieved.

(7) Contacts with the family, both at the group home and in the family home, shall be scheduled on a regular basis. These contacts shall be recorded.

(8) Visiting on and off the campus shall be arranged by the group home and have the approval of the director. No child shall be permitted to visit in any proposed permanent placement home until the suitability of the home has been determined by the group home through documented study and observation. Visiting in the natural home and homes of relatives shall be encouraged where consistent with the service plan.

(9) The group home shall be responsible for arranging for ongoing social services to the family in preparation for the return of the child into the home. Services to the family may be provided by the group home, a licensed facility or agency under whose auspices the group home may operate, or through referral to another agency. If services to the family are being provided by another agency, both social workers concerned shall consult to determine procedures and responsibilities. Arranging for services to families of children committed to a public or private child care agency shall be the sole responsibility of the public or private agency.

Section 6. Case Records. (1) If a child has previously been placed in foster care, a record shall be kept of the dates of each placement, the names of the foster families, institution, or any other facilities where the child was placed and the reason for the termination of each placement.

(2) A record of all supervisory and casework contacts with the child and family shall be made reflecting work directed toward the goals outlined in the social service plan and the progress toward these goals or the need for a new social service conference.

(3) The date of discharge and the name and address of the person [and/]or organization to

whom the child is discharged shall be recorded.

(4) The discharge record shall reflect the goals originally planned which have been met as well as those not met. For those goals not met, the record shall indicate the barriers which prevented their completion. Any change of goals shall be noted along with their state of completion at discharge.

Section 7. Program. (1) Infants and children of preschool age and those children incapable of attending school shall not be placed in a group home unless all other resources have been exhausted, or if the child seems to have need for the structure of the group home.

(2) When a group home receives such children under the conditions listed under subsection (1) of this section, the following requirements shall be met:

(a) Child care staff shall be required to have appropriate training under supervision in the care of infants and children before being allowed to work with this age group. There shall be at least one (1) child care staff in attendance for every three (3) infants in residence.

(b) Daily program activities shall be provided with emphasis on the child's physical, intellectual, emotional, and social growth. Individual needs and developmental levels of the children in care shall [must] be considered.

(c) The daily program shall include a variety of creative activities including art, music, dramatic play, stories and books, and block building.

(d) Indoor and outdoor play shall be available in which children can make use of both small and large muscles.

(e) Opportunities for solitary or group play, for the child to choose activities, and for learning self-help procedures shall be provided.

(f) Sufficient toys and equipment to provide the variety of experiences listed above shall be available.

(3) Children shall not be made solely responsible for the day-to-day cleaning and maintenance functions of the group home but may assist in such work by individual assignments.

(4) Children shall be expected to carry out daily assignments of a constructive nature that contribute to their knowledge of household operation, such as meal serving, bedmaking, care of own living area, vegetable and flower gardening, and care of pets.

(a) Children shall participate in selection of assignments and shall have a chance to become familiar with a variety of tasks. They shall be apprised why the work must be done and be able to get a sense of achievement and recognition for their contribution.

(b) Chores shall be similar to those of children from typical families in the neighboring community.

(c) Work or chore assignments shall not be used as a form of punishment.

(5) Children may be given jobs for which they receive payment, which shall be clearly differentiated from duties expected of any child in relation to the routines of daily living. Any money the child earns shall belong to him for his own use. Work shall be done in compliance with child labor laws and paid for in accordance with community rates. Children shall not be exploited for their labor.

(6) Clothing.

(a) A well-chosen, adequate supply of clothing shall be provided for each child while living in the group home.

(b) Donated clothing shall be selected with utmost care to avoid use of shoddy, soiled garments, or outmoded styles.

(c) Children's shoes shall be checked regularly to assure correct fit. Whenever replacement of shoes is necessary, children shall be individually fitted with new shoes.

(7) Personal hygiene.

(a) Staff shall train children to develop acceptable standards of modesty and respect for the privacy of others.

(b) Each child shall be provided his own articles of personal hygiene such as toothbrush, comb, hairbrush, wash cloth, towel, razor, toothpaste, shaving cream and deodorant.

(8) Recreation, leisure and social life.

(a) Each child's birthday shall be celebrated.

(b) Traditional holidays shall be celebrated in a fitting manner.

(c) Children shall have access to a daily newspaper and to magazines suitable for the age group served.

(d) Each child shall be allowed to maintain a private and personal accumulation of items as a means of learning individuality.

(9) Religion.

(a) The religious beliefs and rights of children shall be respected.

(b) The group home shall provide opportunities for the child to have an appropriate religious affiliation and religious experience in accordance with the religious preferences of the parent(s), the child, or legal guardian.

(c) Children shall be encouraged to participate in religious activities, but shall not be coerced or expected to participate in all religious activities when this is not in the best interest of the child.

(10) Education.

(a) All children of school age shall attend an accredited school, or shall be tutored by a certified teacher under the supervision of the local school system in accordance with existing laws.

(b) Sufficient time and appropriate facilities shall be provided for quiet study after school hours.

(11) Sex education.

(a) Children shall be given accurate and appropriate information about sex and shall be helped to develop desirable attitudes and standards regarding sexual behavior.

(b) Children shall be provided an opportunity to discuss the ideas they have, their anxieties and concerns about matters such as masturbation, menstruation, marriage and family life.

(12) Discipline. Disciplinary methods shall be designed and implemented through positive guidance to help the individual child develop self-control and assume responsibility for his acts. The facility shall:

(a) Establish simple and consistent rules both for children and staff that set the limits of behavior.

(b) The seclusion of a child in a locked room shall be prohibited except in group homes providing an in-depth treatment-oriented child care program or group homes for treatment of adjudicated delinquents.

(c) No child shall be separated from the group any longer than is required to produce a therapeutic effect.

(d) In no instance shall harsh, cruel, unusual punishment or demeaning and humiliating discipline be used. This includes the use of spanking, paddling, or slapping a child. Extreme misbehavior shall be dealt with in other more acceptable forms of discipline. The abuse statutes KRS 620.030, 620.040, 620.050(1), (2), (3), (4), (5), and 620.990 [199.335, 208.020(4) and (5), and KRS 208.990(5) and (6)] or their successor statutes shall be observed. In no incidences shall the child be subjected to harsh or corporal physical discipline nor shall any method of discipline be used that is threatening, shaming or frightening. Loud and profane or abusive language shall not be used.

(e) Children shall not be denied food which is necessary for daily nutritional requirements or forced to eat any food as a means of discipline.

(f) No child shall be forced to participate in any group exercises or activities as a punitive measure.

(g) Children placed in time-out areas shall be in sight or sound of an adult at all times and shall be checked at regular intervals by the child care worker making the decision to use such a room.

(13) Personal possessions.

(a) Each child shall be allowed to bring personal possessions with him to the group home and to acquire belongings of his own to the degree that such possessions contribute to a sense of autonomy and identity.

(b) If an allowance is given, it shall be scaled to the child's age and similar to what other children in the community receive. There shall be no restrictions placed on use of such monies.

(c) Such allowance shall not be withheld as punishment; however, reasonable deductions may be made in such allowances upon agreement of the child in cases where damages have occurred by the child.

LARRY MICHALCZYK, Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 10, 1989

FILED WITH LRC: October 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1989: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Gibson

(1) Type and number of entities affected: Programs affected are 19 licensed group homes, operated by private child care facilities. These regulations must be met in order for the facilities to be licensed and govern minimum standards of operation and care.

(a) Direct and indirect costs or savings to those affected: Proposed amendments will not result in indirect costs or savings to entities affected.

1. First year: Proposed amendments will not result in indirect costs or savings to entities affected.

2. Continuing costs or savings: Proposed

amendments will not result in indirect costs or savings to entities affected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are not other factors affecting cost nor will these amendments have any effect on competition.

(b) Reporting and paperwork requirements: The amendments will not increase or decrease existing paperwork requirements.

(2) Effects on the promulgating administrative body: These amendments will not have any effect on the Department for Social Services.

(a) Direct and indirect costs or savings: These amendments will not result in increased costs or savings to the Department for Social Services.

1. First year: These amendments will not result in increased costs or savings to the Department for Social Services.

2. Continuing costs or savings: These amendments will not result in increased costs or savings to the Department for Social Services.

3. Additional factors increasing or decreasing costs: There are no anticipated factors that will increase or decrease costs of care or services.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated increase or decrease on local or state revenues as a result of these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as statutes require the cabinet to monitor and regulate private child-caring agencies.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or policy in conflict.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation or policy in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This does not apply as no conflict exists.

(6) Any additional information or comments: There is no additional information which is relevant to this regulation.

TIERING: Was tiering applied? No. This regulation is applicable to the group home program statewide, which includes all agencies licensed by the Cabinet for Human Resources. This regulation establishes requirements for those group homes which provide care for foster children care. To tier would be to provide unequal treatment to those facilities in the same class, thus raising questions of a constitutional nature.

CABINET FOR HUMAN RESOURCES Department for Social Services (Proposed Amendment)

905 KAR 1:110. Treatment-oriented child care.

RELATES TO: KRS 199.011(5), (6), (7), (12), 199.640 to 199.670

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: This regulation is

necessary to carry out provisions of KRS 199.640. It shall be used as a supplement to, not in lieu of, other applicable regulations. It serves to provide minimum standards for treatment-oriented child care in institutions and group homes which by application for licensing show intent to provide an in-depth treatment-oriented child care program.

Section 1. Definitions. (1) "Treatment-oriented child care" means the process of providing in-depth treatment to children who have been determined by psychosocial evaluation to be in need of such treatment.

(2) "Psychosocial evaluation" means the process of gathering information including a social history and the results of psychological testing and subsequent assessment.

(3) "Intake" means the process of screening a client based on an application; psychosocial evaluation; information from school, parents, and the court; the preintake conference; and all medical information available.

(4) "In-depth treatment program" means the process whereby clients are selected on the basis of definable areas for treatment, using accepted treatment methods designed to meet those areas of need, according to a written plan based on the documented needs of clients, in the context of a therapeutic milieu, and utilizing the expertise of trained professionals qualified to render treatment.

(5) "Client" means a child who has been determined by psychosocial evaluation to be in need of specialized treatment based upon inability to function in his home environment, school and community.

(6) "Therapeutic milieu" means the total service designed and provided to resolve a problem, with all parts considered of importance in affecting total life of the child.

(7) "Treatment director" means the individual who has overall responsibility for the treatment program.

(8) "Primary treatment agent" means an individual who by his training and/or experience, is qualified to treat clients with accepted methods designed to meet the areas of need.

(9) "Accepted treatment method" means a humane mode of treatment recognized by the social work profession as being valid and appropriate.

(10) "Time-out area" means any room used by the private child care facility to temporarily separate a child from the other children in order to prevent or control a crisis situation.

Section 2. Intake and Admissions Procedures.

(1) Social history. The content of the social history shall cover all information relevant to assessment and understanding of the child's problem and the determination of the need for treatment.

(2) There shall be a preintake professional staff conference to determine whether the client is capable of benefiting from the in-depth treatment program. The outcome of this meeting shall be a decision to interview the client or to recommend alternative treatment possibilities.

(3) There shall be a preadmission interview with the client by a designated treatment staff member for the purpose of verifying previous information as well as obtaining a firsthand view of the degree of impairment, if any, in the level of function of the client.

(4) A treatment plan based on a diagnostic evaluation of the needs and problems of the client and his family and involving the client, family, and all staff members that will be working with the client and his family shall be formulated before the client is placed for treatment and shall be reviewed and evaluated monthly thereafter.

(5) The treatment plan shall include:

(a) The goals to be achieved by the client and parents during the time of treatment.

(b) The specific treatment directed toward the modification of the client's emotional disturbance.

(c) A decision regarding the group of which the client will be a member.

(d) Relationships to be encouraged and developed with staff members.

(e) The educational program for the client.

(f) The recreational program for the client.

(g) Designation of staff responsibility for working with parents and for direct treatment of the client.

(h) The goals in respect to discharge of the client such as expected length of stay and placement after discharge.

(6) If at any point during the time the child is in residence a decision is made that treatment is inappropriate for the client, alternate plans shall be formulated and implementation begun.

Section 3. Case Conferences. (1) A case conference regarding each client shall be held at least quarterly during which all staff members who work with the particular client and his family, including [to include] the treatment director, shall participate.

(2) All agencies having a significant role in the life of the client shall have a representative present at the quarterly case conference, when possible. The client [and/or] his family shall be present at the quarterly case conference, if [when] appropriate.

(3) There shall be a complete review of each client's treatment plan semiannually to formulate new plans.

Section 4. Staff. (1) All treatment-oriented facilities shall have treatment, child care, and supportive staff.

(2) In any treatment-oriented facility, one (1) staff person shall be designated as treatment director.

(a) The treatment director shall hold a master's degree in social work or a closely related field and a minimum of two (2) years postgraduate experience in providing or supervising treatment for children with emotional problems.

(b) In the facility, serving fifteen (15) or fewer clients, the duties of the treatment director and primary treatment agent may be carried by one (1) staff member.

(3) The treatment director's responsibilities shall include but not be limited to:

(a) Acting as chairperson in the staffing and evaluation conferences.

(b) Being available to the primary treatment agent for supervisory consultation for a minimum of one (1) hour per week.

(c) The continuing training of any bachelor's level primary treatment agent.

(d) Keeping the executive director and/or board of directors apprised of the day-to-day

operation and needs of the treatment program.

(e) Through communications with the executive director the coordination of the activities of other staff members to maintain a therapeutic milieu.

(f) Responsibility for the quality and appropriateness of the treatment process.

(4) Child care and supportive staff shall be capable of working within the therapeutic milieu.

(5) The maximum caseload for any primary treatment agent shall not exceed fifteen (15).

(6) For each primary treatment agent that the treatment director supervises his maximum caseload shall be reduced by three (3).

(7) The minimum qualifications for all primary treatment agents shall be a bachelor's degree in social work or a closely related field and one (1) year experience working with children.

(8) The primary treatment agent's duties shall include but not be limited to:

(a) Providing treatment to each client.

(b) Recording all progress in the client's case.

(c) Updating all records in regard to goals and needs of client based on the treatment plan.

(d) Preparing reports on the progress of the client for the monthly evaluation conference.

(e) Notifying the treatment director when treatment goals have been met.

(f) Preparing a termination summary upon the approaching discharge of client.

(g) Being available for emergencies.

Section 5. Program. (1) Every institution or group home providing treatment shall have a program of services extending to parents either by direct provision or by referral.

(2) There shall be a concerted effort to coordinate all elements of the program in a facility through the treatment director to assure the effectiveness of the therapeutic milieu.

(3) Every treatment facility shall provide for the educational needs of all clients either by providing classes in regular and special education or by arrangements with a state accredited educational institution.

(4) Clients placed in time-out areas shall be in sight or sound of an adult at all times, preferably a primary treatment agent, and shall be checked at regular intervals by the primary treatment agent who makes the decision to use such a situation. The "time-out area" shall not be used as a punishment and shall include all the physical comforts which the child normally has access to in the child care facility.

(5) Accepted methods of treatment shall be utilized by primary treatment agents which are harmonious in nature and designed to produce goal attainment within reasonable time parameters. All methods used shall be capable of being coordinated among all staff members as a part of the therapeutic milieu.

(6) All aspects of a program of treatment shall be directed toward the return of the client to his home and community. This shall involve:

(a) Use of planned treatment specific to the client's emotional problems.

(b) Fostering healthy and meaningful relationships with adults and peers.

(c) Maintaining contacts between the client in residence and his or her parents or parent substitutes, or significant adult.

(7) In no instance shall clients be subjected

to physical or mental abuse.

(8) Staff shall deal with each instance of problem behavior in a manner that is appropriate at the time for the individual client and penalties shall meet the treatment needs of the clients.

(9) Work assignments of an unpleasant or undesirable nature shall not be used as a punishment.

(10) Reparation for damage may, within reason, be required. The child who earns money may be expected to pay for damaged or destroyed property, or to repair it.

(11) Group punishment for misbehavior of one or more members shall not be used.

(12) Humiliating or degrading punishment shall not be used.

(13) Corporal punishment, including slapping, spanking, paddling, belting, deprivation of sleep, marching, standing rigidly in one spot, or any kind of physical discomfort, shall not be used.

(14) Staff shall not carry or use handcuffs, weapons, or other restraining devices in the performance of their duties.

Section 6. Discipline in Group Therapy. (1) Treatment staff shall have the primary responsibility for discipline in group therapy.

(2) The following policies regarding disciplining techniques in group therapy or any other situation shall be required.

(a) A group member shall never touch or handle other group members unless it is to restrain a fellow group member from hurting himself or someone else.

(b) Restraining shall never include striking.

(c) There shall be no pushing of children.

(d) Children shall never be allowed to discipline other children; this is solely the responsibility of staff, and all employees shall abide by this policy.

(e) Groups may recommend certain kinds of constructive discipline that will assist fellow group members, but staff shall always have the final word.

(f) There shall be no work projects without some expected tangible and meaningful results that are clearly understood by the youth involved. Executive directors shall insure that work projects are constructive and never demeaning.

(g) Unusually hard work or strenuous physical "exercises" for disciplinary reasons shall never be allowed.

(h) Sustained screaming, yelling, or any other means of verbal abuse from staff or children shall never be allowed.

(i) All informal group meetings shall be directly supervised by a staff member.

Section 7. Termination of Service and Aftercare. (1) The decision that the client no longer needs or can benefit from treatment-oriented child care and that he is ready to leave the facility shall be reached in a joint conference in which the client, parent, child care worker, primary treatment agent, teacher, treatment director, and other staff as indicated, participate with the executive director carrying final responsibility.

(2) No client shall be discharged to a placement unless a process of preparation for the placement has been completed. The preparation shall include a conference with the

parents, or parent substitutes, to update them on the client's problems, his accomplishments at overcoming the problems, and his continuing needs.

(3) The preparatory conference shall be followed by at least one (1) brief visit by the client prior to permanent placement.

(4) Discharge planning shall begin early enough to allow for proper plans for custody, return home or into another placement, special school, or other special programs and for continuing or terminating treatment.

(5) The client and parents shall have adequate preparation for termination of placement in the institution, whether the client is to return home or to move to a foster family, another facility, or the home of relatives.

(6) In the event a facility does not provide aftercare services to families then the facility shall have the responsibility of providing the service through referral to other agencies. A written referral shall be made if aftercare supervision is made by referral to another agency.

(7) The client shall have the help he needs to become independent of the agency and, at the same time, shall have assurance that he can obtain services when necessary.

(8) An interview with the client individually and with the parent(s) or foster parents jointly shall be conducted within one (1) week of the client's release from the facility.

(9) The client shall be seen for aftercare supervision at least one (1) time each week during the first month following his release. The frequency of contact may decrease thereafter if the client makes a good adjustment, but shall not be less than once a month.

(10) Written reports shall be made of all contacts with the client and reviewed monthly to determine the need for continued aftercare services or discharge from custody.

(11) The client shall be discharged from supervision when he is with his own family and making a satisfactory adjustment, when he is legally adopted, when he is capable of self-care, or when another agency has accepted responsibility for him.

Section 8. Treatment Records. (1) A treatment record containing personal data and treatment information shall be maintained for each client.

(2) Treatment records shall be considered confidential and available only to appropriate staff and only through proper channels.

(3) Treatment records shall contain:

(a) Fact sheet data.

(b) The order vesting legal custody.

(c) Copies of original reports from the court and welfare agencies.

(d) Birth and health certificates.

(e) Educational records.

(f) Diagnostic workups including social background information.

(g) Psychometric data.

(h) Medical and dental records.

(i) Summaries of conferences and records of treatment program recommendations.

(j) Chronological recordings by the primary treatment agent assigned to the client.

(k) Reports of various staff members submitted for evaluation conferences, including educational achievement.

(l) A summary of placement and recording of aftercare supervision.

(4) If the aftercare supervision is not provided by the facility having treatment responsibility for the client, ongoing reports of the child's adjustment and other pertinent data shall be submitted monthly to the facility responsible for treatment by the agency providing aftercare.

(5) The client's complete treatment record shall be kept by the facility providing treatment until aftercare supervision has been terminated.

(6) Following the termination of aftercare supervision, the client's treatment record shall be disposed of according to the regulations under 905 KAR 1:091, Section 8.

LARRY MICHALCZYK, Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 10, 1989

FILED WITH LRC: October 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1989: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Gibson

(1) Type and number of entities affected: Programs affected are 9 licensed treatment-oriented child-caring facilities. These regulations set minimum standards of operation and care for such facilities and are required for licensure purposes.

(a) Direct and indirect costs or savings to those affected: Proposed amendments will not result in indirect costs or savings to entities affected.

1. First year: Proposed amendments will not result in indirect costs or savings to entities affected.

2. Continuing costs or savings: Proposed amendments will not result in indirect costs or savings to entities affected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are not other factors affecting cost nor will these amendments have any effect on competition.

(b) Reporting and paperwork requirements: The amendments will not increase or decrease existing paperwork requirements.

(2) Effects on the promulgating administrative body: These amendments will not have any effect on the Department for Social Services.

(a) Direct and indirect costs or savings: These amendments will not result in increased costs or savings to the Department for Social Services.

1. First year: These amendments will not result in increased costs or savings to the Department for Social Services.

2. Continuing costs or savings: These amendments will not result in increased costs or savings to the Department for Social Services.

3. Additional factors increasing or decreasing costs: There are no anticipated factors that will increase or decrease costs of care or services.

(b) Reporting and paperwork requirements: No

additional reporting or paperwork requirements will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated increase or decrease on local or state revenues as a result of these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as statutes require the cabinet to monitor and regulate private child-caring agencies.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or policy in conflict.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation or policy in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This does not apply as no conflict exists.

(6) Any additional information or comments: There is no additional information which is relevant to this regulation.

TIERING: Was tiering applied? No. This regulation is applicable to the child-caring/treatment-oriented program statewide, which includes all agencies licensed by the Cabinet for Human Resources. This regulation establishes requirements for those facilities, institutions or agencies which provide treatment-oriented child care. To tier would be to provide unequal treatment to those facilities in the same class, thus raising questions of a constitutional nature.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 1:120. Treatment of adjudicated delinquents.

RELATES TO: KRS 199.011(6), (12), 199.640, 605.090(1)(d), (3), 635.060(3) [208.200(1)(b), 208.300, 208.430(1)(d)]

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: This regulation is necessary to carry out the provisions of KRS 199.640. It shall be used as a supplement to, not in lieu of, other applicable regulations. It will function [functions] to establish [set] minimum standards for treatment programs in child caring institutions and group homes which, upon [by] application for licensure [licensing] show intent to provide an in-depth treatment-oriented child care program for adjudicated delinquents.

Section 1. Definitions. (1) "Treatment-oriented child care for adjudicated delinquents" means the process of providing in-depth treatment to adjudicated delinquents who have been committed to an institution or group home by the court or who have been committed to the cabinet and placed in private institutions or group homes by the cabinet and who have been determined by psychosocial evaluation to be in need of such treatment.

(2) "Psychosocial evaluation" means the assessment of an individual's condition based on a social history, psychological testing and any

other pertinent information.

(3) "Intake" means the process of screening and securing relevant information concerning a client from a psychosocial evaluation, the school, parents, community and court, in addition to the findings of the admission conference and all medical information available.

(4) "In-depth treatment program" means one in which clients are selected on the basis of definable areas for treatment, using accepted treatment methods designed to meet those areas of need, according to a written plan, for a time period based on the documented needs of clients in the context of a therapeutic milieu, and utilizing the expertise of trained professionals qualified to render the treatment.

(5) "Client" means a child who has been adjudicated as delinquent by the court, who has been determined by psychosocial evaluation to be in need of in-depth treatment, and has been admitted to a child caring facility for in-depth treatment.

(6) "Therapeutic milieu" means an environment in which staff adults exist for the benefit of the children in their care and in which the total service is designed and provided to resolve a problem, with all the parts considered of importance in affecting the total life of the child.

(7) "Treatment director" means the individual who has overall responsibility for the treatment program.

(8) "Primary treatment agent" means an individual who by his training and/or experience is qualified to treat adjudicated delinquents with accepted methods designed to meet the areas of need.

(9) "Accepted treatment method" means a humane mode of treatment recognized by the social work profession as being valid and appropriate.

(10) "Time-out area" means any room used by the treatment facility to temporarily separate a child from the other children in order to prevent or control a crisis situation.

Section 2. Intake and Admissions Procedures.

(1) Social history. The content of the social history shall cover all information relevant to assessment and understanding of the client problem and to determination of the need for treatment.

(2) A psychological evaluation of the client prepared by a certified psychologist shall be secured no later than five (5) working days after admission.

(3) The results of the medical examination required by 905 KAR 1:091 shall be made a part of the intake study.

(4) There shall be an admission conference regarding each client consisting of a majority of the treatment staff or their designees to determine on the basis of written materials submitted for intake whether the client is in need of treatment program.

(5) There shall be an admission interview with the client. A designated treatment staff member shall interview the client for the purpose of validating previous information as well as obtaining a first hand view of the degree of impairment in the level of functioning of the client.

(6) A treatment and staffing plan based on a diagnostic evaluation of the needs and the identification of the problems of the child and his family shall be formulated at the time the

client is placed for treatment in the facility and shall be reviewed monthly thereafter. Staff members involved in the treatment program of the client shall take part in making the plan. Such planning shall include:

- (a) The goals to be achieved in the client's treatment program during the time of residence;
- (b) The specific treatment directed toward the modification of the client's behavior;
- (c) A decision about the client's living arrangement;
- (d) The relationships to be encouraged and developed with staff members;
- (e) The educational program for the client;
- (f) Recreational experiences for the client;
- (g) Designation of direct treatment staff; and
- (h) The goals in respect to placement [and/]or release of the client.

(7) If at any point during the time the child is in residence a decision is made to terminate treatment or that treatment is inappropriate for the client, alternate plans shall be formulated and implementation begun.

Section 3. Staff. (1) The staff shall consist of treatment, child care and support personnel.

(2) One (1) staff person shall be designated treatment director.

(a) The treatment director shall hold a master's degree in social work or a closely related field and two (2) years of direct experience with adjudicated delinquents or a bachelor's degree in social work or a closely related field and three (3) years experience in direct work with adjudicated delinquents.

(b) In the facility for ten (10) or fewer clients the duties of treatment director and primary treatment agent may be carried out by one (1) staff member.

(3) The treatment director's responsibilities shall include but not be limited to:

(a) Being available to the primary treatment agent for supervisory consultation for a minimum of one (1) hour per week.

(b) The continuing training of primary treatment agents;

(c) Keeping the executive director and board of directors apprised of the day-to-day operation and needs of the treatment program;

(d) Maintaining the quality and appropriateness of the treatment process.

(4) The maximum caseload for any primary treatment agent shall not exceed ten (10).

(5) For each primary treatment agent that the treatment director supervises, his maximum caseload shall be reduced by three (3).

(6) The minimum qualifications for a primary treatment agent shall be a bachelor's degree in social work or a closely related field and one (1) year experience working with children.

(7) The primary treatment agent's duties shall include but not be limited to:

(a) Providing treatment to each client;

(b) Maintaining records in regard to goals and needs of the client based on the treatment plan;

(c) Preparing reports on the progress of the client for the monthly evaluation conference;

(d) Preparing a termination summary upon the approaching placement or release of the client; and

(e) Being available for emergencies.

(8) There shall be a psychiatrist and certified psychologist on call.

Section 4. Program. (1) Every facility

providing treatment for adjudicated delinquents shall make treatment services available to parents either directly or by referral.

(2) A case conference shall be held quarterly consisting of all staff members working with the client and his family and where possible representatives from all facilities or agencies having significance in the life of the client. The facility providing the treatment shall notify other facilities or agencies having a significant role in the life of the client of the time and place of case conference.

(3) When a client has been in treatment in a facility for six (6) months, there shall be a complete review of his case to determine the appropriateness of and necessity for his continued residence and treatment. The results of this review shall be put in writing and given to the executive director of the facility. The executive director shall review the results of the determination and make recommendations which shall be put into the client's record with the results of the review. This review shall be conducted monthly following the initial six (6) month review.

(4) Every facility shall provide for the education of all clients of legal school age either by providing classes in regular and special education or by arrangements with an accredited educational institution.

(5) Every facility shall plan to meet the educational needs of clients not of legal school age but who have not completed high school.

(6) Clients placed in time-out areas shall be in sight or sound of an adult at all times, preferably a primary treatment agent, and shall be checked at regular intervals. The time-out areas shall not be used as a punishment and shall include all the basic physical comforts which the child normally has access to in the treatment facility.

(7) Staff shall deal with each instance of behavior in a manner that is appropriate at the time for the individual client and penalties shall meet the treatment needs of the client.

(8) Reparation for damage may, within reason, be required. The client who earns money may be expected to pay for damaged or destroyed property, or to repair it.

(9) Humiliating or degrading punishment shall not be used.

(10) Corporal punishment including slapping, spanking, paddling, belting, marching, standing rigidly in one spot, or any kind of physical discomfort shall not be used.

(11) Staff shall not carry or use handcuffs, weapons, or other restraining devices in the performance of their duties.

(12) The following policies regarding disciplining techniques in group therapy shall be required:

(a) A group member shall never touch or handle other group members unless it is to restrain a fellow group member from hurting himself or someone else.

(b) Restraining shall never include striking.

(c) There shall be no pushing of children.

(d) Children shall never be allowed to discipline other children; this is solely the responsibility of staff, and all employees shall abide by this policy.

(e) Groups may recommend certain kinds of constructive discipline that will assist fellow group members, but staff shall always have the final word.

(f) There shall be no work projects without some expected tangible and meaningful results that are clearly understood by the youth involved. The executive director shall insure that work projects are constructive and never demeaning.

(g) Unusually hard work or strenuous physical "exercises" for disciplinary reasons shall not be used.

(h) Sustained screaming, yelling, or any other means of verbal abuse from staff or children shall never be allowed.

(i) All informal group meetings shall be directly supervised by a staff member.

(13) Accepted methods of treatment shall be utilized by primary treatment agents which are harmonious in nature and designed to produce goal attainment within reasonable time parameters. All methods used shall be coordinated among all staff members as a part of the therapeutic milieu.

(14) All aspects of a program of treatment shall be directed toward the return of the client to his home and community. This shall involve:

(a) Use of planned treatment specific to the client's behavioral problems;

(b) Fostering healthy and meaningful relationships with adults and peers;

(c) Maintaining contacts between the client in residence and his or her parents(s), parent substitute(s), or other significant adult.

Section 5. Use of Security Rooms. (1) A security room shall be used only when there is need for external controls not afforded by the regular program, as in the case of the client who has lost control of himself and is in imminent danger of hurting himself or others through his actions or where the client has demonstrated an inability to adjust to the routine of the treatment process, for example the impulsive client, the chronic AWOL, etc.

(2) No client shall be placed in a security room without the advance approval in writing of the treatment director or his designee.

(3) Prior to being placed in a security room the client shall have a thorough understanding of the reasons for such action.

(4) Immediately after the client is placed in a security room, appropriate staff shall meet to develop a security treatment plan for the particular client, which clearly defines what is expected of him.

(5) The client shall be apprised of the security treatment plan and given a thorough explanation of it so that he can clearly understand what is expected of him during the time he is in a security room.

(6) The primary treatment agent shall see the client at least twice a day.

(7) The security treatment plan shall be reviewed every twenty-four (24) hours to determine the appropriateness and therapeutic benefits of the placement.

(8) All meals shall be served to the client at mealtimes.

(9) The client shall have clothing, clean bed linens, pillow and pillow case, blanket and mattress, regular showers, mail, and be provided writing material.

(10) While in a security room the client shall wear clothing that cannot be used for self-abuse. Objects that are potentially dangerous to the client such as belts, pens,

matches, etc., shall be removed.

(11) A staff member shall check on the condition of the client at least once every hour.

(12) Checks of the security room shall be made to see that there is adequate heat and ventilation.

(13) Regular and frequent contacts by staff with the client shall occur to prevent the client from feeling rejected and to provide him with the security of interested persons.

(14) The client shall spend no more time in a security room than is required to produce a therapeutic effect.

(15) Security rooms shall not be used for punishment but shall be used as a treatment tool.

(16) A group may recommend placement in a security room, but the final decision shall be made in writing by the treatment director or his designee after a consideration of the appropriateness of the recommendation.

(17) A security room shall be constructed and furnished in a manner so as to prevent the client from injuring himself and will not contain materials which produce poisonous nor noxious gases when burned.

(18) The client's security record shall contain the reasons for placement in the security room, the date and time of client's placement, all contacts made to the client while in the security room, the treatment plan in use during the client's stay in the security and the time and date of release from security.

(19) When the client has progressed to the point of being released from a security room, a structured written plan for the client's functioning in regular treatment program shall be developed and initiated to help the client adjust to release from security.

Section 6. Termination of Service and Aftercare. (1) The decision that the client no longer needs or can benefit by what the particular institution can offer him, and is ready to leave the institution, shall be reached in a joint conference in which the client, parent(s) (if [when] possible), child care worker, primary treatment agent, teacher, and other staff as indicated, participate with the treatment director carrying final responsibility.

(2) No client shall be discharged to a placement unless a process of preparation for the placement has been completed which shall include at least one (1) conference with the parent(s) or parent substitute(s) to update them on the client's problems, his accomplishments at overcoming the problems, and his continuing needs, and at least one (1) preplacement visit by the client to the placement.

(3) Discharge planning shall begin early enough to allow for proper planning for custody, for return home or into another placement, for special education or other special programs, and for continuing or terminating treatment.

(4) The client and parent(s) shall have adequate preparation for termination of placement in the institution, whether the child is to return home or move to a foster family, another institution, or the home of relatives.

(5) In the event the treatment facility does not provide aftercare services to families, then the facility shall have the responsibility of providing the services through referral to other agencies. A written agreement shall be made if aftercare supervision is made by referral.

(6) The client shall have the help he needs to

become independent of the facility.

(7) Written reports shall be made of all contacts with the client and shall be reviewed monthly to determine the need for continued aftercare services or release from custody.

(8) The client shall be discharged from supervision when he is with his own family and making a satisfactory adjustment, when he is legally adopted, when he is capable of self-care, or when another agency has accepted responsibility for him.

Section 7. Treatment Records. (1) A treatment record containing personal data and treatment information shall be maintained for each client.

(2) Treatment records shall be considered confidential and available only to the appropriate staff through proper channels.

(3) Treatment records shall contain when completed: fact sheet data; order vesting legal custody; copies of original reports from the court and welfare agencies; birth and health certificates; reports from the client's school; diagnostic workups including social background information; school reports, psychometric data, medical and dental records; summary of conferences and record of treatment program recommendations; chronological recording by the primary treatment agent assigned to the client, reports of various staff members submitted for evaluation conferences, including educational achievement; preplacement plans; summary of placement and recording of aftercare supervision, and closing summary.

(4) If the aftercare supervision is not carried by the institution or group home staff, a final summary report as well as ongoing reports of the child's adjustment and other pertinent data shall be forwarded to the facility responsible for treatment.

(5) The client's complete treatment record shall be kept by the institution or group home until aftercare supervision has been terminated.

(6) Following the termination of aftercare supervision, the client's record shall be disposed of according to the regulations under 905 KAR 1:091, Section 8.

LARRY MICHALCZYK, Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 10, 1989

FILED WITH LRC: October 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1989: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Gibson

(1) Type and number of entities affected: Programs affected are treatment-oriented child-caring facilities providing care for adjudicated delinquents. These regulations establish minimum standards of operations for such facilities.

(a) Direct and indirect costs or savings to those affected: Proposed amendments will not result in indirect costs or savings to entities

affected.

1. First year: Proposed amendments will not result in indirect costs or savings to entities affected.

2. Continuing costs or savings: Proposed amendments will not result in indirect costs or savings to entities affected.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are not other factors affecting cost nor will these amendments have any effect on competition.

(b) Reporting and paperwork requirements: The amendments will not increase or decrease existing paperwork requirements.

(2) Effects on the promulgating administrative body: These amendments will not have any effect on the Department for Social Services.

(a) Direct and indirect costs or savings: These amendments will not result in increased costs or savings to the Department for Social Services.

1. First year: These amendments will not result in increased costs or savings to the Department for Social Services.

2. Continuing costs or savings: These amendments will not result in increased costs or savings to the Department for Social Services.

3. Additional factors increasing or decreasing costs: There are no anticipated factors that will increase or decrease costs of care or services.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated increase or decrease on local or state revenues as a result of these amendments.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as statutes require the cabinet to monitor and regulate private child-caring agencies.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or policy in conflict.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation or policy in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This does not apply as no conflict exists.

(6) Any additional information or comments: There is no additional information which is relevant to this regulation.

TIERING: Was tiering applied? No. This regulation is applicable to the child-caring program statewide, which includes all agencies licensed by the Cabinet for Human Resources. This regulation establishes requirements for those facilities, institutions or homes which provide treatment-oriented child-care to juvenile delinquents. To tier would be to provide unequal treatment to those facilities in the same class, thus raising questions of a constitutional nature.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 1:140. Foster care, adoption assistance.

RELATES TO: KRS 199.467

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: This regulation is required by P.L. 96-272, Adoption Assistance and Child Welfare Act of 1980. It serves to set forth the maximum number of children in foster care who can remain in care for more than twenty-four (24) months and the steps which will be taken to achieve such goal.

Section 1. Definitions. (1) "Child care institution" means an institution caring for no more than twenty-five (25) children that is licensed by the Cabinet for Human Resources.

(2) "Foster care" means care of a child in a foster family home or child care institution.

(3) "Foster family home" means a home which is approved by the Cabinet for Human Resources.

Section 2. Children in Care. During the federal fiscal year beginning October 1, 1984 and succeeding fiscal years, the maximum number of children who may [will] receive foster care in excess of twenty-four (24) months is 1,225.

Section 3. Goal Achievement. Activities directed at the achievement of this goal may include but not be limited to supportive services to the child and his family to prevent or eliminate the need for removal of the child, attempting to place the child in close proximity to the family and in the least restrictive setting, implementing case plan and a case review procedure that periodically assess the appropriateness of the child's placement and reevaluate the services provided to assist the child and his family, providing supportive services to the family to make it possible for the child to return home, and at the end of six (6) months in foster care to formulate a permanent plan for the child.

Section 4. 905 KAR 1:040, Foster parents, basic criteria; 905 KAR 1:085, Foster care review; and 905 KAR 1:100, Procedures for presenting MH/MR children for observation, are hereby repealed.

LARRY MICHALCZYK, Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 10, 1989

FILED WITH LRC: October 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by November 16, 1989: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Linda R. Yeary

(1) Type and number of entities affected:
Entities affected are all foster children

receiving services from the Department for Social Services.

(a) Direct and indirect costs or savings to those affected: There are no direct costs or savings to affected entities due to the fact that the department absorbs all costs relating to provision of care and services for foster children.

1. First year: There are no direct or indirect costs or savings to affected entities due to the fact that the department absorbs all costs relating to provision of care and services for foster children.

2. Continuing costs or savings: There are no direct or indirect costs or savings to affected entities due to the fact that the department absorbs all costs relating to provision of care and services for foster children.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are not other factors and no effect on competition.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: The department provides nearly all costs of care and services for foster children. (Less than 1/15 of the foster care budget is derived from sources other than government funding.)

(a) Direct and indirect costs or savings: As stated in (2) above, the department absorbs nearly all the cost of providing care and services; no savings or increases on these costs are foreseen.

1. First year: There are no direct or indirect costs or savings to affected entities due to the fact the department absorbs all costs relating to provision of care and services for foster children.

2. Continuing costs or savings: There are no direct or indirect costs or savings to affected entities due to the fact the department absorbs all costs relating to provision of care and services for foster children.

3. Additional factors increasing or decreasing costs: There are no foreseen factors that will increase or decrease costs of care or services.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect (increase or decrease) on local and state revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative was considered as statutes require the department to provide care and services.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or policy in conflict.

(a) Necessity of proposed regulation if in conflict: There is no conflict in statute, regulation or policy.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This does not apply as no conflict exists.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? No. This regulation is applicable to the foster care

program statewide, which includes all agencies with which the Department contracts.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:004. Resource and income standard of medically needy.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Definitions. The following definitions shall be applicable:

(1) "Spouse" means a person legally married to another under state law.

(2) "Institutionalized spouse" means an individual who is in a medical institution or nursing facility, or participates in a home and community based services (HCBS) waiver program, with a spouse who is not in a medical institution or nursing facility or HCBS waiver program so long as such individual is likely to be in the medical institution or nursing facility or waiver program for at least thirty (30) consecutive days while the community spouse remains out of a medical institution or nursing facility or HCBS waiver program.

(3) "Community spouse" means the spouse of an institutionalized spouse, who remains at home in the community and is not living in a medical institution or nursing facility or participating in an HCBS waiver program.

(4) "Medical institution or nursing facility" means a hospital, skilled nursing facility, or intermediate care facility (including intermediate care facility for the mentally retarded).

(5) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home (or both) and may include thirty (30) consecutive days of receipt of home and community based waiver services (or a combination of both). A continuous period of institutionalization terminates when an individual has been out of a medical institution or nursing facility, or HCBS waiver program, for thirty (30) consecutive days.

(6) "Likely to remain" in an institution means a determination by the cabinet based on a physician's written statement that an individual in a medical institution, nursing facility, or HCBS waiver program is expected to remain in that setting or program for thirty (30) consecutive days.

(7) "Countable resources" are resources not subject to exclusion in the Medicaid Program.

(8) "State spousal resource standard" means the amount of couples' combined countable resources determined necessary by the cabinet

for community spouses to maintain themselves in the community.

(9) "Spousal protected resource amounts" are resources deducted from couples' combined resources for community spouses in eligibility determinations for institutionalized spouses; amounts above spousal protected resource amounts are used to determine eligibility for institutionalized spouses.

(10) "Spousal resource allowances" means the differences in the dollar value of resources protected for community spouses and the value of the resources actually held in the name of community spouses.

(11) "Resource assessment" means the assessment, upon request by either spouse, of the joint resources of a couple when a member of the couple enters a medical institution or nursing facility or becomes a participant in an HCBS waiver program.

(12) "Support right" means the right of institutionalized spouses to receive support from community spouses under state law.

(13) "Assigned support right" means the assignment of the support right of an institutionalized individual to the state or Medicaid program.

(14) "Undue hardship" means that Medicaid eligibility of the institutionalized spouse cannot be established on the basis of assigned support rights and the spouse is subject to discharge from the medical institution, nursing facility, or HCBS waiver program due to inability to pay.

(15) "Other family members" means children who are either minor or dependent, dependent parents and dependent siblings of either member of a couple and who reside with the community spouse.

(16) "Minors" means the couples' minor children (under age twenty-one (21)) who live with a community spouse and are being claimed as dependents by either spouse under the Internal Revenue Service Code (IRSC).

(17) "Dependent children" means the couples' children age twenty-one (21) and above who live with the community spouse and are claimed as dependents by either spouse under the IRSC.

(18) "Dependent parents" means parents of either member of a couple who live with the community spouse and are claimed as dependents by either spouse under the IRSC.

(19) "Dependent siblings" means a brother or sister of either member of a couple (including half-brothers and half-sisters and siblings gained through adoption) who reside with the community spouse and are claimed as dependents by either spouse under the IRSC.

(20) "Otherwise available income" means income to which community spouses have access and control.

(21) "Gross income" means nonexcluded income which would be used to determine eligibility prior to income disregards.

(22) "Community spouse maintenance standard" means the income standard to which community spouses' income is compared for purposes of determining the amount of allowances used in the posteligibility calculation.

(23) "Other family members maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of other family members and the standard maintenance amount.

(24) "Standard maintenance amount" means one-twelfth (1/12) of the nonfarm income

official poverty line (defined by the federal Office of Management and Budget and revised annually in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981) for a family unit of two (2) members (with revisions of the official poverty line applied for medical assistance provided during and after the second calendar quarter that begins after the date of publication of the revisions) multiplied by 122 percent effective September 30, 1989, and multiplied by 133 percent effective July 1, 1991, and multiplied by 150 percent effective July 1, 1992.

(25) "Monthly income allowances" means amounts deducted in the posteligibility calculation for maintenance needs of community spouses and other family members. The allowances are based on the deficit remaining after spouses' and other family members' income is compared to appropriate maintenance needs standards.

(26) "Significant (or extreme) financial duress" exists when either member of a couple establishes to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse so as to permit the community spouse to remain in the community.

Section 2. [1.] Resource Limitations and Exclusions of the Medically Needy. The following provisions are applicable with regard to computation of allowable resources:

(1) The upper limit for resources for family size of one (1) and for family size of two (2) is set at \$2,000 and \$4,000 respectively, effective January 1, 1989, with fifty (50) dollars for each additional member.

(2) A homestead, occupied or abandoned, household equipment, and farm equipment without limitation on value are excluded from consideration.

(3) Equity of \$6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, is excluded from consideration. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or nonincome producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) Equity of \$4,500 in automobiles is excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, or if specially equipped (e.g., as for use by the handicapped) the total value of such automobile is excluded.

(5) Burial reserves of up to \$1,500 per individual, which may be in the form of burial agreement(s) (prepaid burials or similar arrangements), trust fund(s), life insurance policies, or other identifiable funds are excluded from consideration. The cash surrender value of life insurance is considered when determining the total value of burial reserves. When burial funds are commingled with other funds, the applicant has up to thirty (30) days to separately identify the burial reserve

amount. Interest or other appreciation of value of an excluded burial reserve is excluded so long as such amount is left to accumulate as a part of the burial reserve.

(6) Burial spaces, plots, vaults, crypts, mausoleums, urns, caskets, and other repositories which are customarily and traditionally used for the remains of deceased persons are excluded from consideration as a countable resource without regard to value.

(7) Resources determined in accordance with subsections (3), (4), and (5) of this section, or Section 21 of this regulation, to be in excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group is ineligible.

(8) The following exclusions are also applicable as stated:

(a) Proceeds from the sale of a home are excluded from consideration for three (3) months from date of receipt if used to purchase another home.

(b) Resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support are excluded from consideration.

(c) Payments or benefits from federal statutes, other than Title XVI (Supplemental Security Income), are excluded from consideration (as either a resource or income) if precluded from consideration in Title XVI determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance is excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource is excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(f) Effective with regard to determinations of eligibility made on or after April 16, 1988, and applicable with regard to the usual three (3) month period for retroactive eligibility, the life interest that Medicaid applicants or recipients may have in real estate or other property shall be excluded from consideration as an available resource.

(g) Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988 real property is excluded from consideration for adult medical assistance and state supplementation recipients if:

1. Such property is jointly owned and its sale would cause undue hardship due to loss of housing for the other owner or owners; or

2. Its sale is barred by a legal impediment; or

3. The owner's reasonable efforts to sell have been unsuccessful.

(h) Cash payments intended specifically to enable applicants or recipients to pay for medical or social services are not considered as available income or as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it will be considered a resource.

(i) Effective with regard to determinations of eligibility made on or after June 1, 1989, any amount received which is a result of an underpayment (i.e., which is a retroactive

payment) of benefits from Title II (Federal Old Age, Survivors, and Disability Insurance Benefits) or Title XVI (Supplemental Security Income) is excluded as a resource for the first six (6) months following the month in which the amount is received or for the first nine (9) months following receipt if receipt is during the period of October 1, 1987 through September 30, 1989.

Section 3. [2.] Income and Resource Exemptions. Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) may not be allowed in determining eligibility for medical assistance only.

Section 4. [3.] Income Limitations of the Medically Needy. Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 5 [4] of this regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	\$2,600	\$217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

For each additional member, \$720 annually or sixty (60) dollars monthly is added to the scale. The change shown in this section of the regulation shall be effective with regard to determinations of eligibility made on or after July 1, 1989.

Section 5. [4.] Additional Income Considerations. (1) In comparing income with the scale as contained in Section 4 [3] of this regulation, gross income is adjusted as follows in all cases with exceptions as contained in Section 6 [5] of this regulation:

(a) Effective with regard to determinations of eligibility made on or after October 1, 1989, in Aid to Families with Dependent Children (AFDC) related medical assistance cases [In cases of adults and children], the standard work related expenses of adult members and out-of-school youth are deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction is ninety (90) [seventy-five (75)] dollars per month. All earnings of an in-school child are disregarded. Full-time and part-time employment, and school attendance, shall be as defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(b) Effective with regard to determinations of eligibility made on or after October 1, 1989, in AFDC related medical cases, dependent care as a work expense is allowed (but only when the dependent is included in the assistance unit) for full-time and part-time employment (as defined in 904 KAR 2:016, Standard for need and

amount; AFDC). The dependent care work expense shall be deducted after all other disregards have been applied. The dependent care work expense allowed shall not exceed, per month, \$200 for full-time or part-time employment per child under age two (2), and \$175 for full-time employment or \$150 for part-time employment per child age two (2) and above and for each incapacitated adult. [In cases of adults and children, dependent care as a work expense is allowed not to exceed \$160 per child or incapacitated adult per month for full-time employment (as defined in subsection (1) of this section) or \$110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1) of this section). A dependent care work expense deduction is allowed only when the dependent is included in the assistance unit.]

(c) Effective with regard to determinations of eligibility made on or after October 1, 1989, in AFDC related medical assistance cases, any advanced payment or refund relating to the federal earned income tax credit shall be disregarded.

(2) The following special factors are applicable for pregnant women, infants and children eligible pursuant to Section 9401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86):

(a) Such pregnant women and children may have family income up to, but not to exceed, 100 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of March [July] 1 of the particular state fiscal year;

(b) Pregnant women, infants and children who would be eligible under the provisions of OBRA 86 except for income in excess of the allowable standard may not become eligible by spending down to the official poverty guidelines;

(c) Effective with regard to determinations of eligibility made on or after June 1, 1989, available resources shall be disregarded;

(d) The Aid to Families with Dependent Children (AFDC) budgeting methodology (except for application of the AFDC earned income disregard of the first thirty (30) dollars and one-third (1/3) of the remainder) shall be used; and

(e) Changes of income that occur after the determination of eligibility of a pregnant woman shall not affect such pregnant woman's eligibility through the remainder of the pregnancy including the usual post partum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) Effective with regard to determinations of eligibility for Medical Assistance furnished on or after October 1, 1988, pregnant women and children eligible pursuant to Section 4101 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) shall be subject to the same special factors applicable to pregnant women, infants, and children as specified in subsection [4] (2)(b), (c), (d) and (e) of this section [regulation], and this additional special factor: such pregnant women and children under age one (1) may have family income up to, but not to exceed, 125 percent of the official

poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of March [July] 1 of the particular state fiscal year.

(4) The following special income and resource limits and provisions are applicable for determinations of eligibility of qualified Medicare beneficiaries for the special Title XVIII benefits described in 907 KAR 1:006, effective for determinations of eligibility made on or after January 1, 1989.

(a) The following income upper limits, shown as a percentage of the official poverty income level, shall be effective on the specified dates: January 1, 1989, eighty-five (85) percent; January 1, 1990, ninety (90) percent; January 1, 1991, ninety-five (95) percent; and January 1, 1992, 100 percent.

(b) The official poverty income guidelines will be those promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of March [July] 1 of the particular state fiscal year.

(c) The income disregards to be used will be those applicable in the federal Supplemental Security Income (SSI) program.

(d) Resources shall be limited to no more than twice the allowable amount for the federal Supplemental Security Income (SSI) program.

Section 6. [5.] Specified Individuals in Long-Term Care Facilities [Chronic Care Institutions]. For aged, blind or disabled individuals in long-term care facilities not subject to treatment as the institutionalized spouse of a community spouse as shown in Section 21 of this regulation [chronic care facilities], the following requirements with respect to income limitations and treatment of income shall be applicable.

(1) In determining eligibility, the appropriate medically needy standard or special income level is used as are appropriate disregards and exclusions from income. In determining patient liability for the cost of institutional care, gross income is used as shown in subsections (2) and (3) of this section.

(2) Income protected for basic maintenance, effective July 1, 1986, is forty (40) dollars monthly in lieu of the figure shown in Section 4 [3] of this regulation. All income in excess of forty (40) dollars is applied to the cost of care except as follows:

(a) Available income in excess of forty (40) dollars is first conserved as needed to provide for needs of the [spouse and] minor children up to the appropriate family size amount from the scale as shown in Section 4 [3] of this regulation.

(b) Remaining available income is then applied to the incurred costs of medical and remedial care that are not subject to payment by a third party (except that, effective for determinations of eligibility for periods beginning on or after December 1, 1988, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state), including Medicare and health insurance premiums and medical care recognized under state law but

not covered under the state's Medicaid plan.

(3) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs.

(4) When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the Medical Assistance Program) if actually available for payment to the provider.

(5) Effective with regard to determinations of eligibility made on March 16, 1989 and thereafter, Supplemental Security Income (SSI) or state supplementation payments received by specified institutionalized Medicaid eligible individuals in accordance with Section 1611(e)(1)(G) of the Social Security Act shall be excluded from consideration as either income or a resource, and such payments may not be used in the posteligibility process to increase the patient liability.

Section 7. [6.] Spend-down Provisions. No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 4 [3] of this regulation may qualify for medical assistance in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period; effective October 1, 1988, medical expenses incurred in periods prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income so long as such medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses. Effective for determinations of eligibility for periods beginning on or after February 1, 1989, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state and still be considered incurred costs of the applicant or recipient.

Section 8. [7.] Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment.

Section 9. [8.] Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medical Assistance Program. Examples of such special services or items include television and telephone service, private room or bath, private duty nursing services, etc.

Section 10. [9.] Pass-through Cases. Increases in social security payments due to cost of living increases but for which the individual

would be eligible for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements. Beginning on November 1, 1986, the additional amount specified in Section 12202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) shall be disregarded, i.e., that amount of social security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) such individuals would be eligible for federal supplemental security income benefits; eligibility as a result of such disregard shall not exist prior to July 1, 1986. To be eligible, applicants must apply by July 1, 1988.

Section 11. [10.] Relative Responsibility. For purposes of the Medical Assistance Program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Effective for determinations of eligibility made on or after December 1, 1987, children under age twenty-one (21) living with parents (but not including children age eighteen (18) and above who are blind or disabled) are considered dependent minor children for purposes of deeming of income and resources under the Medicaid Program even if such children are emancipated under state law. This responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, but not including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness. Effective July 1, 1987, a husband and wife sharing a room or comparable accommodation in a long term care facility may be considered to be "living with" each other after they have continuously shared such a room or accommodation for six (6) months, if treating such husband and wife as living apart would prevent either of them from receiving medical assistance.

(2) In cases of aged, blind, or disabled applicants or recipients living with their eligible spouse, total resources and adjusted income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind or disabled applicants or recipients living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below.

(a) Determine the potential spend-down amount of the eligible individual by comparing the countable income to the Medically Needy Income Level (MNIL) for one (1) as shown in Section 4 [3] of this regulation.

(b) Allocate to other dependents in the household from the ineligible spouse income in an amount equal to one-half (1/2) of the MNIL for a family size of one (1) for each dependent.

(c) If the ineligible spouse's income is more than one-half (1/2) of the MNIL for a family

size of one (1), combine the income of the ineligible spouse with that of the eligible individual and compare that figure with the MNIL for a couple to determine continuing eligibility or the spend-down amount. Effective December 1, 1989, if the ineligible spouse's income is less than one-half (1/2) of the MNIL for a family size of one (1), the income is disregarded and the income of the eligible individual is compared with the MNIL for a family size of one (1).

(d) Compare the amount resulting from paragraph (a) of this subsection with the result of paragraph (c) of this subsection and determine eligibility using the spend-down amount, if any, which is greater.

(e) Resources shall be considered in the same manner as for an eligible spouse.

(4) In cases of aged, blind, or disabled couples, living apart for any reason other than institutionalization, both of whom are concurrently applying for or receiving MA only, income and resources are considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (5) [(4)] of this section. If the separation is due to the institutionalization of a spouse, mutual consideration of income for the institutionalized spouse ceases in the month of separation and for the community spouse in the month after the month of separation but resources are considered mutually available to each other the month of separation, and for the six (6) months following that month unless such would act to preclude eligibility of the individual in long-term care (except when the resource rule shown in Section 21 of this regulation is applicable due to a continuous period of institutionalization beginning on or after September 30, 1989).

(5) In cases of an aged, blind, or disabled individual living apart from a spouse (for a reason other than institutionalization) who is not a recipient of MA only, eligibility is determined on a couple basis for the month of separation and as a single individual after the month of separation.

(6) For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in Section 11(4) and (5) [10(3) and (4)] of this regulation, who has jointly held resources with his spouse, one-half (1/2) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(7) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or nonspouse, whose

medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(8) In cases of a blind or disabled child under eighteen (18) living with his parent(s) (including stepparent, if applicable), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent using the adult scale. The income and resources of the parent(s) shall also be considered available to such child who is aged eighteen (18) through twenty-one (21), if in school, when to do so will work to the child's benefit and the individual was aged eighteen (18) through twenty-one (21) in September, 1980, and was MA eligible at that time.

(9) Income and resources of parent(s) are not considered available to a child living apart from the parent(s), but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and income are considered in relation to family size of one (1). Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988, the following criteria should be used to determine whether a child who has been living with his parents and is institutionalized in a psychiatric facility is to be considered as living apart from his parents: a child is to be considered as living with his parents unless he has been in the facility for thirty (30) or more days or a physician specifies that it is anticipated he will remain in the facility for thirty (30) or more days (regardless of whether the child actually does so); a child who is institutionalized in a psychiatric facility but is legally committed to or in the custody of the Cabinet for Human Resources is not to be considered as living with his parents.

(10) When a recipient (but not including a child) in a family case has income and resources considered in relation to family size and enters a long term care facility, his income and resources are considered in the same manner as previously for up to one (1) year with, effective with regard to determinations of eligibility made on or after February 1, 1988, the individual allowed forty (40) dollars as his basic maintenance standard. When a child in a family case is in the long term care facility, eligibility of the child is determined in the same manner for up to a year but his liability for the cost of care is determined by allowing to the child from his own income forty (40) dollars and considering the remainder available for the cost of care. (Note: in this situation any welfare payment made to the child is disregarded when determining liability for cost of care.) The eligibility of the individual, with regard to income and resources, shall be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 12. [11.] Treatment of Income of the Stepparent or Parent/Legal Guardian of a Minor Parent/Legal Guardian (referred to as a

"Grandparent") and Effect on Eligibility of the Assistance Group Effective with Regard to Determinations of Eligibility Made On or After June 1, 1989. An incapacitated (as determined by the department) stepparent's income, or a grandparent's income, is considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. When the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income is considered available to the spouse or the grandparent's gross income is considered available to the minor parent in accordance with the policies set forth in this section.

(1) Disregards/exclusions from income. The following disregards/exclusions from income shall be applied:

(a) The first seventy-five (75) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time (with full-time and part-time employment as defined in Section 5 [4](1) of this regulation).

(b) An amount equal to the medically needy income limitations scale as shown in Section 4 [3] of this regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals (not including the spouse or minor parent) living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining his federal personal income tax liability.

(c) Any amount actually paid by the stepparent or grandparent to individuals not living in the home who are claimed by him as dependents for purposes of determining his personal income tax liability.

(d) Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(e) Income of a stepparent or grandparent receiving supplemental security income.

(f) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

(2) Determining eligibility of the grandchild(ren) and stepchild(ren). When a stepparent or grandparent has available income remaining after disregards/exclusions are applied, the income may be deemed to the spouse (of the stepparent) or minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Eligibility of the stepchild(ren) or grandchild(ren) is determined in the following manner in order to take this requirement into consideration: consider only the income of the grandchild(ren) and minor parent, or stepchild(ren) and parent (spouse of the stepparent) as appropriate. The budget size would include the child(ren) and parent. If there is no excess, the child(ren) is eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(3)(a) To determine separate eligibility of the minor parent (of the grandchild) or spouse (of a stepparent) when the eligibility of the grandparent or stepparent is not to be determined, consider the income of the child(ren) and his parent, and the actual amount available for deeming from the grandparent or stepparent. The budget size would include the child(ren) and parent (but not the grandparent

or stepparent). If there is no excess, the minor parent or spouse (of a stepparent) is eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(b) When the grandparent (of a minor parent) or the stepparent (spouse of the parent with children) are to be included in the case, eligibility of the minor parent or spouse cannot be determined separately but must be determined in combination with that of the grandparent or stepparent. The combined eligibility of the minor parent and grandparent or spouse and incapacitated stepparent is determined in the usual way including the available income of the grandparent or stepparent, the minor parent or spouse of the stepparent, and the grandchild(ren) or stepchild(ren) as appropriate. When the grandparent or incapacitated stepparent is included in the case, the amount excluded for the needs of the grandparent or stepparent in the determination of available income in subsection (1) of this section must be considered as available income for purposes of this determination of eligibility. If there is no excess, the minor parent and grandparent or spouse and incapacitated stepparent are eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(4) When determining eligibility of individuals or family groups with excess income, uncovered incurred medical expenses of all members of the budget unit (and dependents of members of the budget unit whose needs are considered when determining the eligibility of that member) may be used to meet the spend-down amount(s).

Section 13. [12.] Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, resources and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility shall be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

(4) A parent in a family case may request that one (1) or more children be technically excluded from the determination of eligibility due to income while a regular application for Medicaid eligibility is processed for other children in the family group. In this circumstance, the income and resources of the technically excluded child(ren) and the technically excluded child(ren)'s needs are excluded in the budgeting process when determining eligibility of the family group. A separate spend-down case(s) may then be established for the technically excluded

child(ren); the income, resources and needs of the responsible relative or parent are included in the budget in accordance with usual criteria, and income/resources and needs of siblings in the other case may also be included in budgeting for the spend-down case if that works to the advantage of the technically excluded child(ren) for whom eligibility is being determined in the spend-down case. Excess income in the spend-down case may be spent-down using uncovered incurred medical care costs of any member of the family included in the budgeting process for the spend-down case.

Section 14. [13.] Treatment of Lump-sum Income. The following policy is effective January 1, 1986: for adult related cases, lump-sum income is prorated over the three (3) month period following the agency's notice of receipt by the client, with any amount spent by the client prior to notification of the agency deducted from the total considered available; any portion of the income remaining available after the three (3) month period is considered in relation to resource limitations; the exception to the treatment of lump sum income is specified in Section 2 [1](8)(i) of this regulation; for AFDC related cases, lump sum income is divided by the medically needy income level and prorated over the resultant number of months. Effective February 1, 1989, lump sum income for individuals eligible under the federal poverty level standards specified in Section 5 [4](2) and (3) of this regulation would be divided by the appropriate standard for the eligible group and prorated over the resultant number of months.

Section 15. [14.] Transferred Resources. [The policy relating to transferred resources shown in this section is effective for determinations of eligibility for periods of time beginning on or after July 1, 1988 and transfers of property occurring on or after that date.]

(1) Effective for determinations of eligibility made on or after October 1, 1989, an individual who transferred property on or before June 30, 1988 for less than fair market value must have a period of ineligibility for medical assistance computed beginning with the month in which the resources were transferred. The period of ineligibility shall be equal to the lesser of twenty-four (24) months or the number of months derived by deducting from the uncompensated excess value the actual cost of care on a monthly basis if the individual is institutionalized or \$500 for each month from the month of transfer if not institutionalized.

(2) [(1)] Effective for determinations of eligibility on or after October 1, 1989, when an institutionalized individual (defined as an individual in a skilled nursing facility, general intermediate care facility, or [psychiatric facility,] mental hospital, [or a participant in a hospice program who is in a skilled nursing or intermediate care facility,] or a participant in the home and community based services waiver program [or the alternate intermediate services program for the mentally retarded so long as eligibility is being determined using the special income level]) applies for medical assistance a period of ineligibility for payments for such service must be computed if at any time during the thirty (30) month period immediately preceding the

application (but on or after July 1, 1988) the individual disposed of property for less than fair market value. The period of ineligibility for such service (beginning with the month in which the resources were transferred) shall be equal to the lesser of thirty (30) months or the number of months derived by dividing the total uncompensated value of the resources so transferred by the average cost, to a private patient at the time of the application, of nursing facility services in the state (either intermediate care or skilled nursing care as appropriate for the level of care).

(3) [(2)] An individual shall not be ineligible for medical assistance or an institutional type of service by virtue of subsection (1) or (2) of this section to the extent that the conditions specified in Section 1917(c)(2)(B), (C) and (D) of the Social Security Act or Section 21 of this regulation are met, nor shall an individual be ineligible for medical assistance or an institutional type of service due to transfer of resources for less than fair market value except in accordance with this section. [Transfers of resources for less than fair market value occurring prior to July 1, 1988 shall not be considered in determinations of eligibility for periods beginning on or after July 1, 1988.]

(4) [(3)] The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual shows the transfer was in accordance with Section 1917(c)(2)(B) or (C)(i) of the Social Security Act or presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is in accordance with Section 1917(c)(2)(B) or (C)(i) or is for some reason other than to qualify for medical assistance or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value. Notwithstanding the preceding, if the assessed agricultural value is used for tax purposes the transfer is required to be for an amount equal to the fair market value.

(5) [(4)] After determining that the purpose of the transfer was to become or remain eligible, the cabinet shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if nonhomestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for nonhomestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(6) [(5)] If retention would result in ineligibility, the cabinet will compute a period of ineligibility for medical assistance or an institutional type of service as provided for in subsections (1) and (2) of this section.

(7) [(6)] The uncompensated value may be

excluded from consideration when good cause exists. A waiver of consideration of the uncompensated amount will be granted subject to the following criteria:

(a) "Good cause" means that an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death of a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) The exclusion may not exceed the amount of the incurred expense or loss; the amount of the uncompensated value to be excluded cannot include any amount which is payable by Medicaid, Medicare, or other insurance.

Section 16. [15.] Special Provisions for AIS/MR Recipients. Medical assistance eligibility for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section and in Section 21 of this regulation.

(1) Usual institutional deeming rules shall be applicable [with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level].

(2) AIS/MR services program participants who participate in the AIS/MR program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard). Income protected for basic maintenance of the AIS/MR participant in the posteligibility determination of patient liability for individuals eligible as medically needy or on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income program in addition to the SSI general exclusion.

(3) If an AIS/MR services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of AIS/MR services projected if eligibility is determined on a monthly basis. [When eligibility is determined using community deeming rules, the attributed cost of care against which monthly available income of the AIS/MR participant shall be applied shall be the projected annual average cost of care for all participants divided by twelve (12) and rounded to the nearest dollar. The amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.]

(4) Eligibility shall continue on the same basis as for an institutionalized individual when the cost of care is greater than the recipient's adjusted monthly income or the recipient is eligible based on the special

income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

Section 17. [16.] Special Provisions for Hospice Recipients. Medical assistance eligibility for participants under the Medicaid hospice benefit shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of the hospice participant in the posteligibility determination of patient liability for noninstitutionalized individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income (SSI) program in addition to the SSI general exclusion. For the noninstitutionalized medically needy participants (all of whom must spend-down on a quarterly basis), the amount protected for basic maintenance is the usual medically needy standard as shown in Section 4 [3] of this regulation plus the SSI general exclusion. For the institutionalized medically needy the amount protected for basic maintenance in the eligibility determination is the medically needy standard for the appropriate family size plus the SSI general exclusion. If a hospice participant is institutionalized in a long-term care facility, the basic maintenance amount is forty (40) dollars per month.

(2) When eligibility is determined for an institutionalized monthly spend-down case, the attributed cost of care against which monthly available income of the hospice participant shall be applied shall be the hospice routine home care per diem (for the hospice providing care) as established by the Medicare program plus the room and board rate for the appropriate level of care (i.e., skilled nursing or intermediate care).

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual when the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

(4) A hospice participant may be eligible for benefits based on this section only if he has elected coverage under the Medicaid hospice benefit rather than the regular Medicaid program.

(5) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 18. [17.] Special Provisions for Recipients Participating in the Home and Community Based Services Waiver Program. Medical assistance eligibility for participants under the home and community based (HCB) services waiver program shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section and in Section 21 of

this regulation.

(1) Income protected for basic maintenance of HCB services program participants who are eligible as medically needy or under the special income level shown in this section shall be the standard used for an individual in the federal supplemental security income (SSI) program in addition to the SSI general exclusion.

(2) HCB services program participants who participate in the HCB program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard).

(3) If an HCB services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of HCB services projected if eligibility is determined on a monthly basis[, except that the amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion].

(4) Usual institutional deeming rules shall be applicable [with regard to all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level].

Section 19. [18.] Treatment of Potential Payments from Medicaid Qualifying Trusts. When an individual (or his spouse for the individual's benefit) creates (other than by will) a trust (or similar legal device) with amounts payable to the same individual, such trust shall be considered a "Medicaid qualifying trust" if the trustee(s) of the trust are permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual. In this circumstance the amount considered available to the trust beneficiary shall be the maximum amount the trustee(s) may (using the trustee's discretion) pay in accordance with the terms of the trust, regardless of the amount actually paid. The cabinet may, however, consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual; the criteria for determining "undue hardship" shall be established by the cabinet.

Section 20. Resource Assessment. Pursuant to Section 1924(c)(1)(B) of the Social Security Act as amended, an assessment of the joint resources of an institutionalized spouse and the community spouse shall be made upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon receipt of relevant documentation of resources. The cabinet shall complete the assessment within forty-five (45) days when the necessary documentation or verification is provided in a timely manner. When the resource assessment is complete, each spouse shall receive a copy of the assessment and notification that the right of appeal of such assessment shall exist at such time as the institutionalized spouse applies for medical

assistance.

Section 21. Protection of Income and Resources of Couple for Maintenance of Community Spouse. Section 1924 of the Social Security Act, as amended, provides for special treatment of income and resources for certain institutionalized spouses. The income eligibility and posteligibility provisions are effective October 1, 1989 for persons institutionalized on or after September 30, 1989. The resource provisions are effective with regard to determinations of eligibility made on or after October 1, 1989 for institutionalized persons beginning a continuous period of institutionalization on or after September 30, 1989.

(1) Supersedes other provisions. The provisions of this section supersede any other provisions of this regulation which is inconsistent with them.

(2) Nonapplicability. Except as specifically provided, this section does not apply to the determination of what constitutes income or resource or the methodology and standards for determining and evaluating income and resources.

(3) Provisions for treatment of income. The following income provisions shall be applicable.

(a) Separate treatment of income. During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (b) of this subsection, no income of the community spouse shall be deemed available to the institutionalized spouse.

(b) Attribution of income. In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined to be eligible for medical assistance, except as otherwise provided in this section and regardless of any state laws relating to community property or the division of marital property, the provisions of Section 1924(b)(2)(A), (B), (C), and (D) of the Social Security Act, as amended, shall be applicable.

(4) Provisions for treatment of resources. The following resource provisions shall be applicable:

(a) Attribution of resources at time of initial eligibility determinations. In determining the resources of an institutionalized spouse at the time of application for benefits under Medicaid, regardless of any state laws relating to community property or the division of marital property, except as provided in paragraph (b) of this subsection, all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse.

(b) Nonattributed resources. The following protected amounts shall be deducted from couples' combined countable resources at time of determination of initial eligibility of the institutionalized spouse:

1. The state spousal resource standard; and, if applicable

2. Additional amounts transferred under a court support order; or, if applicable

3. An additional amount designated by a hearing officer.

(c) Exceptions to resource ineligibility by assignment of support rights. The institutionalized spouse shall not be ineligible by reason of resources determined under paragraphs (a) and (b) of this subsection to be

available for the cost of care in the following circumstances:

1. When the institutionalized spouse has assigned to the cabinet any rights to support from the community spouse;

2. When the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the state has the right to bring a support proceeding against a community spouse without such assignment; or

3. When the cabinet determines that denial of eligibility would work an undue hardship.

(d) Separate treatment of resources after eligibility for benefits established. During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for Medicaid benefits, no resources of the community spouse shall be deemed available to the institutionalized spouse. Resources of the institutionalized spouse protected for the needs of the community spouse but not transferred to the community spouse by the time of the second regularly scheduled redetermination of eligibility (i.e., one (1) year from the month of the initial determination of eligibility) shall be considered available to the institutionalized spouse.

(e) Excess value of an automobile. The equity value of an automobile in excess of prescribed limits which would otherwise be considered available is not included as a countable resource.

(5) Protecting income for the community spouse. The following provisions are applicable with regard to protecting income for the community spouse:

(a) The following allowances are to be offset from income of an institutionalized spouse. After an institutionalized spouse is determined to be eligible for Medicaid, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

1. A personal needs allowance of forty (40) dollars;

2. A community spouse monthly income allowance, but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse;

3. A family allowance determined in accordance with the definition of other family members maintenance standard; and

4. Amounts for incurred expenses for medical or remedial care for the institutionalized spouse.

(b) Establishment of the community spouse maintenance standard. The community spouse maintenance standard is set at \$1,500 per month, to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved; the maintenance standard may be increased for an individual, as appropriate, by a hearing officer.

(c) Court ordered support. If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall not be

less than the amount of the monthly income so ordered.

(6) Permitting transfer of resources to community spouse. The following provisions shall be applicable with regard to transfers of resources from an institutionalized spouse.

(a) Permitted transfer. An institutionalized spouse may, without regard to the usual prohibition against disposal of assets for less than fair market value, transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount equal to the community spouse resource allowance, but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer shall be made as soon as practicable after the initial determination of eligibility, taking into account such time as may be necessary to obtain a court order under paragraph (c) of this subsection.

(b) Establishment of the community spouse resource allowance. The community spouse resource allowance is set at \$60,000, to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items: U.S. city average) between September 1988 and the September before the calendar year involved; for an individual, the allowance may be a higher amount established by a hearing officer, or a higher amount transferred under a court order as specified in paragraph (c) of this subsection.

(c) Transfers under court orders. As specified in Section 1924 (f)(3) of the Social Security Act, as amended, if a court has entered an order against an institutionalized spouse for the support of a community spouse, the usual prohibition against disposal of assets for less than fair market value shall not apply to amounts of resources transferred pursuant to such order for the support of the spouse of a family member.

(7) Requirement for notice and fair hearings. The following notice and fair hearings requirements are applicable:

(a) Notice. Upon a determination of eligibility for Medicaid of an institutionalized spouse or a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse, the cabinet shall notify both spouses (if upon determination of Medicaid eligibility of the institutionalized spouse) or the spouse making the request (if that is the situation) of the amount of the community spouse monthly income allowance, of the amount of any family allowance, of the method for computing the amount of the community spouse resources allowance, and of the spouse's right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

(b)1. Fair hearings. Both the institutionalized spouse and community spouse are entitled to a fair hearing if dissatisfied with the determination of the following:

a. The community spouse monthly income allowance;

b. The amount of monthly income determined to be otherwise available to the community spouse;

c. The attribution of resources at time of

initial eligibility determination; or

d. The determination of the community spouse resource allowance.

2. Revision of monthly maintenance needs allowance. If either the institutionalized spouse or community spouse establishes during the hearing that the community spouse needs income, above the level otherwise provided by the monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the monthly maintenance needs allowance otherwise provided for, an amount adequate to provide such additional income as is necessary.

3. Revision of community spouse resource allowance. If either spouse establishes during the hearing process that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance otherwise allowed, an amount adequate to provide such a monthly maintenance needs allowance.

Section 22. Effective Dates. Except as specified in Section 11(3)(c) of this regulation, the provisions of this regulation, as amended, shall be effective with regard to determinations of eligibility made on or after October 1, 1989.

ROY BUTLER, Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: September 26, 1989

FILED WITH LRC: September 28, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: Approximately 2,000 recipients will be affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

- (b) Reporting and paperwork requirements: None
- (2) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 - 1. First year: \$5 million (cost).
 - 2. Continuing costs or savings: \$7.5 million (cost).
 - 3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements: None
 - (3) Assessment of anticipated effect on state and local revenues: None
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering is not appropriate since this regulation relates to eligibility.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:012. Inpatient hospital services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to inpatient hospital services for which payment shall be made by the Medical Assistance program in behalf of both the categorically needy and the medically needy.

Section 1. Length of Stay. Inpatient hospital services except for services in an institution for treatment of tuberculosis or mental diseases shall be limited to a maximum of fourteen (14) days per admission, with the further exception that effective with regard to medically necessary services provided on or after July 1, 1989 to infants under age one (1) in a disproportionate share hospital as defined in 907 KAR 1:013. Payments for hospital inpatient services. there shall be no limit on the duration of stay or number of admissions. A recipient may transfer from one (1) hospital to another hospital when the transfer is necessary for the patient to receive medical care which is not available in the first hospital. These transfers and admissions shall begin anew the fourteen (14) day per admission limitation; in such situations, the maximum covered inpatient hospital stay that may result is a total of twenty-eight (28) days for the two (2) admissions. Each admission shall have prior approval of appropriateness by the designated peer review organization in order for the

admission to be covered under the program; this requirement does not apply for emergency admissions. Weekend stays associated with a Friday or Saturday admission will not be reimbursed unless an emergency exists.

Section 2. Covered Admissions. Admissions for which payment is made shall be limited to those primarily indicated in the management of acute or chronic illness, injury or impairment, or for maternity care that could not be rendered on an outpatient basis. Admissions relating to only observation or diagnostic purposes shall not be covered. Cosmetic surgery shall not be covered except as required for prompt repair of accidental injury or for the improvement of the functioning of a malformed or diseased body member.

Section 3. Inpatient Hospital Services not Covered by the Medical Assistance Program. (1) Those services which are not medically necessary to the patient's well-being, such as television, telephone and guest meals.

(2) Private duty nursing.

(3) Those supplies, drugs, appliances, and equipment which are furnished to the patient for use outside the hospital unless it would be considered unreasonable or impossible from a medical standpoint to limit the patient's use of the item to the periods during which he is an inpatient.

(4) Those laboratory tests not specifically ordered by a physician and not done on a preadmission basis unless an emergency exists.

(5) Private accommodations unless medically necessary and so ordered by the attending physician.

(6) The following listed surgical procedures, except when a life-threatening situation exists, there is another primary purpose for the admission, or the admitting physician certifies a medical necessity requiring admission to a hospital:

(a) Biopsy: breast, cervical node, cervix, lesions (skin, subcutaneous, submucous), lymph node (except high axillary excision, etc), and muscle.

(b) Cauterization or cryotherapy: lesions (skin, subcutaneous, submucous), moles, polyps, warts/condylomas, anterior nose bleeds, and cervix.

(c) Circumcision.

(d) Dilation: dilation and curettage (diagnostic and/or therapeutic nonobstetrical); dilation/probing of lacrimal duct.

(e) Drainage by incision or aspiration: cutaneous, subcutaneous, and joint.

(f) Exam under anesthesia (pelvic).

(g) Excision: Bartholin cyst, condylomas, foreign body, lesions lipoma, nevi (moles), sebaceous cyst, polyps, and subcutaneous fistulas.

(h) Extraction: foreign body, and teeth (per existing policy).

(i) Graft, skin (pinch, splint or full thickness up to defect size three-fourths (3/4) inch diameter).

(j) Hymenotomy.

(k) Manipulation and reduction with or without x-ray; cast change: dislocations depending upon the joint and indication for procedure, and fractures.

(l) Meatotomy/urethral dilation, removal calculus and drainage of bladder without

incision.

(m) Myringotomy with or without tubes, otoplasty.

(n) Oscopy with or without biopsy (with or without salpingogram): arthroscopy, bronchoscopy, colonoscopy, culdoscopy, cystoscopy, esophagoscopy, endoscopy, gastroscopy, hysteroscopy, laryngoscopy, laparoscopy, peritoneoscopy, otoscopy, and sigmoidoscopy or proctosigmoidoscopy.

(o) Removal; IUD, and fingernail or toenails.

(p) Tenotomy hand or foot.

(q) Vasectomy.

(r) Z-plasty for relaxation of scar/contracture.

ROY BUTLER, Commissioner

HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 10, 1989

FILED WITH LRC: October 12, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort,

Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All disproportionate share hospitals.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None*

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: *This proposed amendment is a technical correction. Any direct or indirect cost was reflected in 907 KAR 1:013 promulgated in July 1989.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

PROPOSED REGULATIONS RECEIVED THROUGH OCTOBER 15, 1989

EDUCATION & HUMANITIES CABINET
Department for Education
Office of Vocational Rehabilitation

706 KAR 1:060. General provisions for operation of the Office of Vocational Rehabilitation.

RELATES TO: KRS 163.120, 163.130, 163.140, 163.160, 34 CFR 361

STATUTORY AUTHORITY: KRS 163.140

NECESSITY AND FUNCTION: KRS 163.120 to 163.160 agree to comply with federal vocational rehabilitation acts, provide for a state rehabilitation agency, set eligibility criteria for vocational rehabilitation services, and direct the State Board for Adult, Vocational Education and Vocational Rehabilitation Services to promulgate regulations governing services, personnel, and administration of the state rehabilitation agency. This regulation prescribes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for such purpose, and the general criteria set forth herein cover the regulatory policies currently in the three (3) year plan for vocational rehabilitation incorporated by reference in 706 KAR 1:010, which is being repealed.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" means the Kentucky Department of Education, Office of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(4) "Relative" means an individual related to another individual by blood, marriage, or adoption, including spouses, parents, grandparents, brothers, sisters, sons, daughters, grandchildren, aunts, uncles, nieces, nephews and first cousins.

(5) "Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial handicap to employment, as defined by KRS 163.460.

(6) "Legally blind" means an individual has a visual acuity of 20/200 or less in the better eye with correction or a visual field of twenty (20) degrees or less, as defined by KRS 163.460.

Section 2. Comparable Benefits. Except as provided in 706 KAR 1:070, the following shall apply:

(1) Comparable benefits application shall be required as follows:

(a) Full consideration shall be given to any comparable benefits available under any other program to an individual with a handicap to

meet, in whole or in part, the cost of physical and mental restoration services and maintenance, unless it would significantly delay the provision of services to the individual who is at extreme medical risk; and

(b) When an individual is eligible for comparable benefits, such benefits shall be utilized insofar as they are adequate and do not interfere with achieving the rehabilitation objective of the individual.

(2) The agency shall not supplant a service that is covered by Medicaid, Medicare, private insurance or any other health services programs. If a vendor of medical services refuses to accept a client's public or private medical coverage for any services covered under such programs, referral and assistance shall be provided by the agency in locating and securing the needed medical services through vendors who will accept the client's medical coverage.

(3) The application for and use of comparable benefits shall be used if available at any time during the period that the individual is receiving agency services.

(4) If the individual who has a handicap refuses to apply for or to accept comparable benefits, the agency shall not provide the service using agency funds.

Section 3. Confidentiality. (1) The Office of Vocational Rehabilitation shall safeguard the confidentiality of all personal information, including photographs and lists of names to assure that:

(a) Specific safeguards protect current and stored personal information;

(b) All applicants, clients, representatives of applicants or clients, and as appropriate, service providers, cooperating agencies, and interested persons shall be informed of the confidentiality of personal information and, upon request, the conditions for accessing and releasing this information;

(c) All applicants and clients or their representatives shall be informed about the Office of Vocational Rehabilitation's need to collect personal information and policies governing its use including as appropriate:

1. Identification of the authority under which information is collected;

2. Explanation of the principal purposes for which the Office of Vocational Rehabilitation intends to use or release the information;

3. Explanation of whether the individuals providing the information is mandatory or voluntary and the effects of not providing requested information to the Office of Vocational Rehabilitation;

4. Identification of those situations where the Office of Vocational Rehabilitation requires or does not require informed written consent of the individual before information may be released; and

5. Identification of other agencies to which information is routinely released; and

(d) Persons who are unable to communicate in English or who rely on special modes of communication shall be provided explanations about state policies and procedures affecting information through methods they can adequately understand.

(2) All personal information in the possession

of the Office of Vocational Rehabilitation shall be used only for purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information shall not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program the Office of Vocational Rehabilitation may obtain personal information from service providers and cooperating agencies under assurances that the information shall not be further divulged, except as otherwise provided under this section.

(3) The Office of Vocational Rehabilitation may release information to involved individuals under the following conditions:

(a) When requested in writing by the involved individual or the individual's representative, the Office of Vocational Rehabilitation shall make all information in the case record accessible to the individual or release it through a representative in a timely manner. Medical, psychological, or other information which the Office of Vocational Rehabilitation believes may be harmful to the individual shall not be released directly to the individual, but shall be provided through a representative, a physician or a licensed or certified psychologist;

(b) When personal information has been obtained from another agency or organization, it may be released only by or under the conditions established by the other agency or organization.

(c) A written request from an applicant or client to a member of the congressional delegation requesting assistance or intercession with regard to vocational rehabilitation services shall be construed by the agency to fulfill the requirements of this section.

(4) Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for persons with disabilities and only if the organization, agency, or individual assures that:

(a) The information shall be used only for the purposes for which it is being provided;

(b) The information shall be released only to persons officially connected with the audit, evaluation or research;

(c) The information shall not be released to the involved individual;

(d) The information shall be managed in a manner to safeguard confidentiality; and

(e) The final product shall not reveal any personal identifying information without the informed written consent of the involved applicant or client or a representative.

(5) Information may be released to other programs or authorities under the following conditions:

(a) Upon receiving the informed written consent of the individual, the Office of Vocational Rehabilitation may release to another agency or organization for its program purposes only, that personal information which may be released to the involved individual under subsection (3) of this section, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or

psychological information which the Office of Vocational Rehabilitation believes may be harmful to the individual may be released when the other agency or organization assures the Office of Vocational Rehabilitation that the information shall be used only for the purpose for which it is being provided and shall not be further released to the involved individual;

(b) The Office of Vocational Rehabilitation may release personal information if required by federal law;

(c) The Office of Vocational Rehabilitation may release personal information in response to investigations in connection with law enforcement, fraud, abuse (except where expressly prohibited by federal or state laws or regulations), and in response to judicial order; and

(d) The Office of Vocational Rehabilitation may also release personal information in order to protect the individual or others when the health or safety of the individual or others is threatened.

Section 4. Employability Evaluation. Substantial physical restoration services (i.e., surgery or physical therapy) shall not be provided in employability evaluation. Major or extensive restoration services shall not be provided to determine if the applicant meets the reasonable expectation criteria of eligibility.

Section 5. Employees' Application for Services. (1) In order to provide agency employees fair and equal access to agency services and to avoid the appearance of impropriety or conflict of interest, an applicant who is an agency employee and the agency shall adhere to the following procedures when such an employee wishes to apply for rehabilitation services:

(a) The employee shall advise the regional administrator of the intent to apply.

(b) The regional administrator shall select a counselor to take the application. Whenever practicable, the counselor shall be located in an adjacent district.

(2) The employee shall be informed of eligibility or ineligibility for services.

(3) Any employee-applicant who is dissatisfied with any action or inaction may appeal pursuant to 706 KAR 1:110.

Section 6. Employees' Relatives' Applications for Services. An employee shall not take an application or provide vocational rehabilitation services to a relative. The relative shall be referred to the branch manager. The branch manager shall assign a staff member who is not a relative to take the application and to provide services as deemed appropriate.

Section 7. Legal Fees. The agency shall not be responsible for any fees incurred by an applicant or client for legal services.

Section 8. Maintenance. The agency shall not subsidize a client's home.

Section 9. Payment Rates for Purchased Services. (1) The Office of Vocational Rehabilitation shall maintain, in accessible form, information on current rates of payment for services provided by the agency. A written record of the effective date of adoption of fee

schedules or rates of payment shall be maintained.

(2) The Office of Vocational Rehabilitation shall ensure that physicians or other vendors of services agree not to charge or accept from the applicant or client or a family member any payment for services unless the amount of such charge or payment is previously known to and, where applicable, approved by the agency.

(3) The establishment, maintenance, and revision of fee schedules and rates of payment for services shall be guided by: review of existing Medicaid, Medicare, or private health care insurance fee schedules; review and consultation with other state rehabilitation agencies; review and consultation with Veteran's Administration or other federal agencies that maintain rate schedules; or consultation with physicians and other vendors of services. Consultation for the purpose of establishing rates of payment may be secured on a fee for service basis.

(4) The rates of payment shall not exceed the maximum established by the agency. A lesser rate may be negotiated between the agency with the service provider.

(5) The agency shall not approve payment for services provided to an individual when the agency has made no prior authorization.

Section 10. Physical or Mental Restoration. Physical or mental restoration services shall be authorized to out-of-state vendors only as follows:

(1) In geographical areas routinely used for the convenience of the individual; or

(2) When it will be economically beneficial to the agency; or

(3) If particular procedure or mode of treatment is not available in state. In this case, the schedule of payment shall be governed by the rates established by the vocational rehabilitation agency in the state where services are to be provided.

Section 11. Placement. The agency shall not pay for job placement services from a private for profit employment or placement agency.

Section 12. Postemployment Services. (1) The expenses of treating acute conditions during postemployment services shall not be borne by the agency.

(2) Postemployment services shall not be provided solely to upgrade a client's financial status.

(3) Support services such as maintenance, transportation, and attendant care shall be provided only in conjunction with other rehabilitation services and shall not be provided solely to support an individual in employment.

(4) If postemployment services are initiated and it becomes obvious that the client cannot or will not remain in or return to employment, the case shall be terminated. The case shall not be reopened for postemployment services.

Section 13. Potentially Terminal Illness. (1) Services shall not be provided to individuals with a potentially terminal illness unless:

(a) There is a favorable medical prognosis for recovery; or

(b) There is a prospect of survival for a reasonable period of time, allowing a return to

work for at least twelve (12) months (work life expectancy).

(2) The following guidelines shall be followed in making a determination:

(a) If surgery or ancillary medical services, such as chemotherapy or nuclear medical treatment is expected to cure the condition, then these services may be provided as if it were any other medical problem.

(b) If the attending physician feels the prognosis is guarded, the agency staff shall request a letter indicating the client's work life expectancy. Those individuals with a twelve (12) month work life expectancy may be served.

Section 14. Prescription Drugs. Current Medicaid rates shall be used to establish payment for prescribed drugs.

Section 15. Second Opinions. The agency may seek a second opinion from a qualified practitioner before determining the eligibility of an applicant or before authorizing services for a client.

Section 16. Self-employment Enterprises. (1) The following shall be met prior to planning for self-employment for clients of the agency:

(a) Clients shall agree to undergo appropriate evaluation to determine work potential, including mental and physical abilities, and interests, abilities, aptitudes, personality traits and other pertinent characteristics.

(b) There shall be evidence that the client is expected to have approximately five (5) years of work expectancy.

(c) Clients shall demonstrate that they can work with minimal or no supervision.

(d) The agency may require clients to undergo prevocational training, as needed, to gain skills and knowledge and to complete small business training.

(e) Clients shall agree to relocate, if necessary.

(f) Clients shall obtain the required licenses, permits, certificates, leases, and in all instances be in conformity with all federal and state laws, and local ordinances in order to commence an enterprise.

(g) The agency may review recordkeeping systems prior to the establishment of the business and periodically thereafter until the case is closed or until liens on any agency purchased equipment expire.

(2) The Associate Superintendent for Vocational Rehabilitation or a designee may approve proposed self-employment enterprises requiring expenditures in excess of \$5,000 through review of the following:

(a) Impact on total agency goals:

1. Fiscal considerations;

2. Applicability of statewideness; and

3. Numerical requirements necessary to demonstrate maintenance of effort and program integrity.

(b) Anticipated cost/benefit ratio and return on investment. Savings derived through increased taxes paid, cessation of benefits, etc., should equal agency expenditure within five (5) years.

(c) Potential for recovery of expenditures from other sources (i.e., Social Security Administration, Workers' Compensation).

Section 17. Sex Change. Agency funds shall not be used to pay for sex change surgery.

Section 18. Sheltered Employment. In addition to the federal requirements for a successful closure, a sheltered employee shall maintain suitable employment for the required sixty (60) days at a minimum of twenty-five (25) percent production of a nonhandicapped worker.

Section 19. Tools and Equipment. The agency may recover tools, equipment, and supplies if the client ceases to use the equipment for the pursuit and practice intended or upon the death of the client.

Section 20. Training. (1) Postsecondary training may be provided for clients pursuant to this section.

(a) Tuition and initial registration fees provided to the training institution of the client's choice shall not exceed those of the highest rate charged by a state-supported institution in Kentucky that offers similar vocational preparation. The Associate Superintendent for Vocational Rehabilitation or a designee may make exceptions only when it is clearly demonstrated that such exceptions are financially advantageous to the agency, or are otherwise in the best interests of the agency's achievement of stated goals.

(b) The agency may provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services (i.e., interpreting services, note-taking services, tutoring services).

(c) Other agency approved postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services may be utilized for clients who are deaf if the total cost of attendance does not exceed the total cost of provision of tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported institution in Kentucky that offers similar vocational preparation.

(d) Institutional training shall be purchased only from those schools that are accredited or licensed by appropriate accrediting or licensing bodies and which comply with all state and federal requirements applicable to their use by the agency.

(e) Training shall be provided only to the entrance level of the vocational objective.

(f) Clients planning to attend a postsecondary institution in Kentucky shall file the Kentucky Financial Aid Form and other need analysis forms as required by the school.

(g) Agency sponsored clients shall maintain full-time student status, as that status is described by the school attended. An exception may be made only in cases where such exception is essential to the achievement of an individual's vocational objective.

(h) Clients shall maintain a "C" average. The agency may continue funding a client for one (1) additional term when this requirement is not met. The agency may require a higher grade point average if such is necessary for satisfactory achievement of the vocational objective.

(i) Termination of agency sponsorship for training shall result in cessation of all support services related to training, e.g., interpreter services, note-taking, attendant care, maintenance, and transportation.

(j) The client shall furnish the counselor with a grade transcript for each semester or quarter.

(k) Cost of attendant services for clients in training shall not exceed the cost of attendant services in the agency sponsored attendant care program at the University of Kentucky.

(2) On-the-job training may be provided pursuant to this subsection.

(a) On-the-job training for unskilled and semiskilled labor positions shall not exceed three (3) months in duration.

(b) On-the-job training for skilled occupations shall not exceed six (6) months in duration.

(c) The vendor or employer shall have made a written commitment to hire the client-trainee upon successful completion of the on-the-job training.

(d) The client in on-the-job training may be paid the legal minimum wage for occupations covered by such statute or the prevailing rate for occupations not covered.

(e) The client in on-the-job training shall receive the compensation coverage, privileges, and other benefits that accrue to other employees.

(f) The agency shall not pay in excess of the legal minimum wage for occupations covered by statute or the prevailing rate for occupations not covered.

(3) Correspondence training may be provided to clients subject to the provision of this subsection.

(a) Correspondence training may be provided if it is the best available method by which the client can receive the necessary training.

(b) The agency shall not sponsor correspondence courses in subjects such as heavy equipment operation, truck driving, depot agent, detective, or airline employee if practical experience is not provided.

(4) Training outside the contiguous United States may be provided to clients pursuant to this subsection.

(a) Training institutions located outside the contiguous United States shall be considered only if all of the following conditions are met:

1. The client is enrolled in a program in the contiguous United States that requires study abroad to satisfy degree requirements for graduation;

2. The study abroad does not lengthen the total program;

3. The client maintains full-time student status while studying abroad;

4. The client is in good academic standing; and

5. The client's successful achievement of the vocational goal is contingent on participation in the study abroad as a part of the approved curriculum.

(b) If the preceding conditions are met, the agency may provide financial assistance only up to the amount normally authorized for in-state training, excluding transportation costs.

Section 21. Transplants or Implants. Transplant or implant procedures which are experimental or which do not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the agency.

Section 22. Visual Impairments. (1) Pursuant to KRS 163.160, individuals with a reported or

diagnosed primary disability of visual impairment shall not be served by the Office of Vocational Rehabilitation.

(2) Clients with a secondary disability of visual impairment may be served. Agency staff shall secure, in all cases of visual impairment, an evaluation of visual loss provided by a physician skilled in the diseases of the eye or by an optometrist.

(3) The agency staff shall secure, in all cases of blindness, a screening for hearing loss from a physician skilled in the diseases of the ear or from an audiologist licensed or certified in accordance with state laws or regulations.

(4) Individuals with deaf-blindness shall be served by the agency that can most appropriately meet the specific and individual needs of the applicant or client who is deaf-blind.

Section 23. 706 KAR 1:010, Three year plan for vocational rehabilitation services, is hereby repealed.

GEORGE R. SIEMENS, JR., Chairman

APPROVED BY AGENCY: September 19, 1989

FILED WITH LRC: October 5, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing has been scheduled on November 28, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its September meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Frankfort, Kentucky 40601, on or before November 23, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kathy Williams

(1) Type and number of entities affected: All applicants and clients of the Office of Vocational Rehabilitation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect cost or savings. This regulation is a continuation of a previous regulation which was repealed.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no additional paperwork other than that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenue.

(4) Assessment of alternative methods; reasons

why alternatives were rejected: Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no additional information or comment.

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation details agency standards for the general administration of the Office of Vocational Rehabilitation.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to adopt policies and procedures necessary for the administration of the program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation prescribes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for such purpose.

EDUCATION & HUMANITIES CABINET

Department for Education
Office of Vocational Rehabilitation

706 KAR 1:070. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: KRS 163.140

STATUTORY AUTHORITY: KRS 163.140

NECESSITY AND FUNCTION: KRS 163.140 directs the State Board for Adult, Vocational Education and Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Office of Vocational Rehabilitation. This regulation sets forth when an order of selection and an economic need test will be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible clients.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Agency" means the Kentucky Department of Education, Office of Vocational Rehabilitation, and its appropriate staff members who are

authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Permanent functional limitation" means an impairment in activity or function imposed by a disability that is not readily amenable to - or likely to be corrected through - surgical intervention and/or medical treatment. Use of the term permanent functional limitation in the agency's order of selection seeks to differentiate between those mental or physical conditions that are usually remedied through the provision of a physical or mental restoration service(s) and those other conditions or disabilities that impose or are likely to impose a permanent loss or substantial reduction in functioning regardless of surgical and/or medical intervention.

(4) "Competitive employment" means that an individual performs significant physical or mental activities in work for remuneration or profit in the public, private, or self-employment sector. Such employment will be the primary means of enabling an individual to remain or become financially self-sufficient.

Section 2. Economic Need. Vocational rehabilitation services may be provided subject to economic need, as follows and with consideration of applicable comparable benefits as provided in 706 KAR 1:060, Section 2:

(1) An economic needs test shall be applied as a condition for furnishing the following vocational rehabilitation services:

- (a) Physical and mental restoration services;
 - (b) Books, supplies, tools and equipment for vocational and other training;
 - (c) Maintenance other than diagnostic;
 - (d) Transportation other than diagnostic;
 - (e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual who is handicapped;
 - (f) Telecommunications, sensory, and other technological aids and devices;
 - (g) Occupational licenses, tools, equipment, and initial stock (including livestock) and supplies;
 - (h) Postemployment services;
 - (i) Tuition and initial registration fees for training beyond the baccalaureate level;
 - (j) Interpreter services for the deaf except as provided in subsection (2)(f) of this section;
 - (k) Reader services for the blind; and
 - (l) Other goods and services which can reasonably be expected to benefit an individual who is handicapped in terms of employability.
- (2) The following services shall be excluded from an economic needs test:
- (a) Diagnosis and evaluation of rehabilitation potential;
 - (b) Counseling and guidance;
 - (c) Services provided by staff at state-owned and operated rehabilitation facilities;
 - (d) Placement;
 - (e) Rehabilitation engineering;
 - (f) Communication assistance in the individual's native language, including interpreters for individuals who are deaf for purposes of providing services set forth in paragraph (a), (b), (c), (d) or (e) of this subsection.
 - (g) Tuition and initial registration fees for vocational and college training up to and including the baccalaureate level;

(h) Adjustment training; and

(i) Supported employment services.

(3) Except as provided in 706 KAR 1:100, those clients who do not meet total financial need criteria shall apply 100 percent of the monthly excess income to their rehabilitation program.

(4) Ninety (90) percent of the 1990 Kentucky median gross income as adjusted to family size shall be used as the criterion for the agency economic needs test.

Section 3. Order of Selection. When the associate superintendent determines that the agency shall be unable to provide services to all eligible applicants who are handicapped, the agency shall implement the order of selection.

(1) Any client previously declared eligible for vocational rehabilitation services shall in no way be affected when the agency implements an order of selection.

(2) The order of selection shall not be applicable for clients whose needs are for nonpurchased services only (counseling, guidance, placement, referral services, coordination of comparable benefits, and/or third party payments).

(3) The order of selection shall not be applicable for clients whose needs are for services at agency owned and operated rehabilitation facilities or for services at CARS contracted private not-for-profit rehabilitation facilities.

(4) On implementation of the order of selection, the agency shall continue to accept referrals of and applications from persons with disabilities.

(5) The order of selection shall in no way regulate the provision or authorization of diagnostic and evaluation services.

(6) All applicants shall be declared eligible or ineligible as appropriate on a timely basis.

(7) Any client entering accepted status after implementation of the order of selection shall be assigned to a priority category. If the priority category is open, the individual may be served. If, however, the priority category is closed, the individual's case shall be held in accepted status until such time as the priority category assigned is opened or the order of selection is lifted.

(8) The order of selection policy shall permit immediate reclassification into either a higher or lower priority category whenever circumstances justify the reclassification.

(9) The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(10) The order of selection system shall have six (6) priority categories as follows:

(a) Priority Category I - eligible clients with a severe handicapping condition.

(b) Priority Category II - eligible public service officers with a nonsevere handicap whose handicapping condition arose from disability sustained in the line of duty.

(c) Priority Category III - eligible clients with a nonsevere handicap whose disability results in permanent functional limitations and who will have a vocational objective of competitive employment.

(d) Priority Category IV - eligible clients with a nonsevere handicap whose disability limits or if not treated will limit one (1) or more major functional capacities, and who will

have a vocational objective of competitive employment.

(e) Priority Category V - eligible clients with a nonsevere handicap whose disability results in permanent functional limitations.

(f) Priority Category VI - any other eligible clients whose handicap is nonsevere.

GEORGE R. SIEMENS, JR., Chairman

APPROVED BY AGENCY: September 19, 1989

FILED WITH LRC: October 5, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing has been scheduled on November 28, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its September meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Frankfort, Kentucky 40601, on or before November 23, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kathy Williams

(1) Type and number of entities affected: All applicants and clients of the Office of Vocational Rehabilitation.

(a) Direct and indirect costs or savings to those affected: There are no identifiable cost savings. Any savings realized would be redistributed in the form of services to a larger population of citizens with disabilities. This regulation is a continuation of a previous regulation which was repealed in order to remove informational material which is not identified as regulatory in KRS Chapter 13A.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no additional paperwork other than that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in

conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no additional information or comment.

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation details the agency standards for an economic needs test and an order of selection for vocational rehabilitation services.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate permits a state to restrict access to services based on reasons of economic need; an order of selection is required when sufficient funds are not available to serve all eligible individuals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Office of Vocational Rehabilitation is financially unable to provide services for all the eligible individuals. An economic needs test and an order of selection must be imposed which will allow available limited funds to be distributed while assuring adequate services will be available to serve persons with severe disabilities.

EDUCATION & HUMANITIES CABINET

Department for Education

Office of Vocational Rehabilitation

706 KAR 1:080. Rehabilitation engineering services.

RELATES TO: KRS 163.140

STATUTORY AUTHORITY: KRS 163.140

NECESSITY AND FUNCTION: KRS 163.140 directs the State Board for Adult, Vocational Education and Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Office of Vocational Rehabilitation. This regulation prescribes when, and under what conditions, rehabilitation engineering services shall be provided, in order to distribute limited funds more equitably over the entire population of otherwise eligible clients.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" means the Kentucky Department of Education, Office of Vocational Rehabilitation,

and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

Section 2. Computer Hardware and Software. The Office of Vocational Rehabilitation shall not purchase computers, microcomputers, other hardware or software for the personal use of applicants or clients. The agency may consider the provision or upgrade of computer hardware and software when:

(1) The equipment is essential to compensate for the limitations caused by the disability;

(2) The equipment is required for the client to achieve a vocational objective of competitive employment;

(3) There are no comparable benefits available to acquire the hardware or software necessary to accomplish the vocational objective; and

(4) In addition, one (1) or more of the following criteria shall be met:

(a) The equipment is required for vocational preparation;

(b) The equipment is required by the job and no provision is made by the employer to supply the equipment; or

(c) The equipment will enable a client to become competitive with nondisabled employees performing the same duties.

Section 3. Vehicle Modification (General). (1) Modification of a van for a client who can be functional in an automobile shall be authorized only to the maximum cost of the automobile modification.

(2) The agency may provide van modifications for clients determined by the agency specialist of the Driver Evaluation/Vehicle Modification Program to be unable to transfer independently into and out of an automobile.

(3) Vehicle modifications shall be provided only on the recommendation of the agency specialist of the Driver Evaluation/Vehicle Modification Program.

(4) Vehicle modification services may be provided to the following:

(a) Clients who are job ready or competitively employed;

(b) Clients who need vehicle modifications in order to participate in job training or work adjustment or physical or mental restoration services;

(c) Clients whose vocational goal is noncompetitive employment;

(d) Clients in need of vehicle modification in order to function in independent living;

(e) Individuals in need of vehicle modification who purchase evaluation services on a fee for service basis.

(5) Vehicle modification shall be provided only after the client completes a driver evaluation and vehicle modification assessment by an agency specialist of the Driver Evaluation/Vehicle Modification Program.

(6) Vehicle modifications shall be inspected and approved by an agency specialist from the Driver Evaluation/Vehicle Modification Program before payment is made.

Section 4. Specific Modifications for Older Vehicles. Agency staff may approve modifications to a vehicle more than six (6) years old only when the following conditions apply:

(1) Modifications costs less than \$1,000;

(2) Modification is simple and is not related to overall vehicle engine or body condition;

(3) Modification is for a vehicle in which client is transported and is not primarily contingent on the condition of the vehicle;

(4) Modification is not of a substantial structural nature; and

(5) Maintenance records and overall condition of the vehicle can justify the exception.

Section 5. Specific Vehicle Modifications Costing More Than \$1,000. (1) Vehicle modifications costing in excess of \$1,000 shall be provided only for those clients whose vocational objective is competitive employment and who are within one (1) year of job placement.

(2) Vehicle modifications costing in excess of \$1,000 shall only be provided on new vehicles except as provided in this section.

(3) The agency may approve vehicle modifications for older vehicles in excess of \$1,000 when maintenance records and overall condition of the vehicle can justify the exception.

Section 6. Upgrading and Repair of Vehicle Modification. (1) Vehicle modification upgrades and repair may be provided for a client when such upgrades are needed for obtaining or maintaining employment.

(2) Upgrading and repair of vehicle modification in excess of \$1,000 shall require the approval of the Associate Superintendent for Vocational Rehabilitation or a designee.

Section 7. Second Time Modifications. (1) Except as provided in this section, the agency shall provide only one (1) vehicle modification per client.

(2) The agency may approve a second time vehicle modification under the following conditions:

(a) The client has demonstrated a two (2) year continuous work history;

(b) The client's employer attests that the modification is needed to maintain employment.

Section 8. Property Modification. (1) Permanent, nonrecoverable modification to private homes, businesses or property is an allowable expenditure if such is necessary to effect vocational rehabilitation of the individual. The individual shall meet financial need qualifications. The counselor shall make every attempt to utilize recoverable, nonpermanent modifications if possible or cost effective.

(a) For modifications costing \$500 or less, the counselor may plan and authorize such modifications.

(b) For modifications costing between \$501 and \$1,000, the counselor may authorize for the lowest of three (3) quotes with branch manager approval.

(c) For modifications costing \$1,001 to \$6,000, bid processes shall be followed in addition to branch manager approval.

(2) The agency may provide essential services necessary to alter or adapt the work situation to enable the client to obtain employment or to insure continuation of employment, including but not limited to the building of a permanent ramp for a wheelchair, modification of machinery to enable the individual to use that particular machine, or a specially designed safety device.

(a) For modifications costing \$500 or less, the counselor may plan and authorize such modifications.

(b) For modifications costing between \$501 and \$1,000, branch manager approval shall be required.

(c) For modifications costing \$1,001 to \$6,000, bid processes shall be followed in addition to branch manager approval.

(3) Property modifications over \$6,000 shall not be allowed.

GEORGE R. SIEMENS, JR., Chairman

APPROVED BY AGENCY: September 19, 1989

FILED WITH LRC: October 5, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing has been scheduled on November 28, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its September meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Frankfort, Kentucky 40601, on or before November 23, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kathy Williams

(1) Type and number of entities affected: All applicants and clients of the Office of Vocational Rehabilitation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect cost or savings. This regulation is a continuation of a previous regulation which was repealed.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no additional paperwork other than that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute regulation or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no additional information or comment.

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation details the agency standards for rehabilitation engineering services.

3. Minimum or uniform standards contained in the federal mandate. Federal regulations mandate that rehabilitation engineering services be made available.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Office of Vocational Rehabilitation is unable to provide for all requested services. Since available funds are limited, some parameters must be established which will allow resources to be distributed consistently.

EDUCATION & HUMANITIES CABINET

Department for Education

Office of Vocational Rehabilitation

706 KAR 1:090. Carl D. Perkins Comprehensive Rehabilitation Center.

RELATES TO: KRS 163.140

STATUTORY AUTHORITY: KRS 163.140

NECESSITY AND FUNCTION: KRS 163.140 directs the State Board for Adult, Vocational Education and Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Office of Vocational Rehabilitation. This regulation establishes the criteria for admission to and withdrawal of services by the Carl D. Perkins Comprehensive Rehabilitation Center.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Discharge" means that no further services shall be provided to an applicant or client. The applicant or client shall be transported to the home area and the Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) shall no longer charge per diem against the case.

(4) "Expulsion" means that the applicant or client has been dismissed from CDPCRC pursuant to Section 5 of this regulation.

(5) "Suspension" means that the applicant or

client shall not receive CDPCRC services for a period of time not to exceed twenty (20) class days, and that the applicant or client shall be transported to the home area; but the applicant or client shall remain enrolled in the program. A per diem shall be charged against the case, and services may resume as soon as the suspension ends.

(6) "Excused absence" means any absence due to personal illness, injury, or accident; serious illness of family members; death of spouse, brother or sister, children including stepchildren, foster children, parents or spouse's parents, or grandparents or spouse's grandparents; requirements to appear in court; military assignments; and other compelling circumstances making it unwise or inadvisable to attend class. In the event of illness, a student may be requested to present a medical statement. Regardless of whether a student believes an absence(s) to be excused or unexcused, the student shall notify the counselor and/or teacher or an appropriate administrator of the absence(s) and the reason therefore, either prior to the absence(s) or as soon thereafter as practical.

(7) "Unexcused absence" means any absence that does not meet the definition of excused absence as described.

(8) "Unexcused tardy" means that an applicant or client is late for class and does not have a note describing the reason from counseling, medical or other professional staff.

Section 2. Admissions Policy. (1) Individuals admitted to CDPCRC shall meet one (1) of the following conditions:

(a) The individual is an applicant of the Office of Vocational Rehabilitation for whom an evaluation is needed prior to making an eligibility or ineligibility decision.

(b) The individual is a client of the Office of Vocational Rehabilitation who requires services of the type provided by CDPCRC, in order to benefit in terms of employability.

(c) The individual is an applicant or client of other agencies which have agreed to reimburse CDPCRC for the cost of services provided.

(2) All prospects for admission shall submit an application for CDPCRC services, including the following:

(a) A consent for CDPCRC to provide emergency medical care. In the case of minors, and persons who have been adjudged legally disabled, the applicant's or client's parent or guardian, as appropriate, shall give the permission, subject to the limitations of KRS 387.660(3).

(b) An agreement by the applicant or client or others to assume responsibility for living arrangements, in the event that the applicant or client is later discharged from CDPCRC. In the case of minors and persons who have been adjudged legally disabled, the parent or guardian, as appropriate, shall agree to assume responsibility for living arrangements.

(c) A description of any limitations that the applicant or client may have in performing activities of daily living.

(3) No applicant or client shall be admitted to any CDPCRC program if there is evidence that a medical or behavioral condition represents a risk to the health or safety of self or others. The determination of whether such a condition exists shall be made by a written opinion from a CDPCRC professional skilled in the area in

question, based upon documentation submitted at referral, and any other information the professional shall gather as needed.

(4) When it is determined that the documentation submitted indicates the possibility that the applicant's or client's medical or behavioral condition represents a risk to self or others, the CDPCRC admissions counselor shall select a CDPCRC professional with expertise in the area that is likely to be a problem, and shall submit the documentation to that professional for an opinion.

(5) When the admissions counselor has requested an opinion from a CDPCRC professional, the decision of such professional shall determine whether the applicant or client shall be admitted to CDPCRC. No such decision shall stand for more than a single referral and if the applicant or client is referred at a later time, a new opinion shall be submitted.

(6) The admissions counselor or the admissions committee, as appropriate, shall at the time that the applicant or client is accepted for CDPCRC services for evaluation or treatment and training, establish a list of recommended services for the applicant or client and make a referral to the appropriate service area.

(7) When a decision is made to accept an applicant or client for admission, the applicant or client shall be notified in writing of the decision, and the date of admission, and a copy of that notification shall be sent to the referral sources.

(8) When a decision is made not to admit the applicant or client to CDPCRC the referral source shall be notified in writing of the decision giving justification for that decision. The applicant or client shall be notified of the decision and informed of the availability of the Client Assistance Program and the right to an administrative review or fair hearing.

(9) Applicants or clients who are dissatisfied with admissions decisions may request an administrative review of the decision pursuant to 706 KAR 1:110.

Section 3. Retention Policy. The decision to provide further services after an applicant or client has completed a CDPCRC program shall be based upon the following:

(1) Further programs are requested by the referral source, or any CDPCRC professional believes that the applicant or client requires further services; and

(2) The program requested for the applicant or client is available.

Section 4. Discharge Policy. (1) Voluntary discharge from the CDPCRC may be for the following reasons:

(a) The individual has completed a program of services, and is not qualified for another CDPCRC program;

(b) The individual does not desire further services from CDPCRC;

(c) The individual's medical condition requires treatment away from the CDPCRC for an extended period of time; or

(d) The individual wishes to leave CDPCRC and cannot be convinced to stay.

(2) An applicant or client may be involuntarily discharged from CDPCRC for the following reasons:

(a) The individual fails to make progress in his program of services and efforts to resolve

the problem have been unsuccessful;

(b) The individual is no longer qualified for the program and no other needed program is available;

(c) The individual's behavioral condition deteriorates to the point of risk to the safety of others;

(d) The individual has been unexcused, absent from class or tardy more than five (5) days in a three (3) month training program or more than ten (10) days in a training program exceeding three (3) months duration;

(e) The individual is expelled for cause.

(3) When a decision is made to discharge an applicant or client for failure to make progress for medical, psychological, behavioral, or personal reasons, these procedures shall be followed:

(a) The decision to discharge from a particular program shall be made by the program manager, with documentation and participation by staff within the department. Discharge from a particular program does not necessarily imply discharge from the facility.

(b) Should the reason for discharge necessitate services outside the facility (e.g., medical, psychological), the applicant or client may be readmitted when the problem is resolved.

(4) The applicant or client may be discharged from CDPCRC without prior notice if necessary to prevent harm to persons or property, or to prevent serious disruption of CDPCRC programs.

Section 5. Suspension and Expulsion Policy.
The director of CDPCRC or a designee may suspend or expel applicants or clients from CDPCRC when it has been determined that the applicant's or client's behavior has upset the order of the institution, or has endangered the safety of others, or indicates that the applicant or client is persistently unwilling to comply with the lawful regulations for the governance of CDPCRC.

(1) Suspension.

(a) An applicant or client may be suspended or expelled for any of the following specific reasons:

1. Physical abuse of another person;
2. The threat or use of violence;
3. The possession or use of alcohol, a controlled substance, or being under the influence of alcohol or a controlled substance on CDPCRC grounds, or at a CDPCRC-sponsored activity;
4. Stealing, destruction of, or defacing of CDPCRC or private property;
5. The carrying or use of weapons;
6. Documented, persistent refusal to participate in a planned program of services; or
7. Flagrant violations of CDPCRC regulations that upset the order of the institution.

(b) Suspension shall mean a dismissal from CDPCRC for a period not to exceed twenty (20) class days.

(c) An applicant or client shall not be suspended until after the following due process procedures have been followed:

1. The applicant or client, or the parent or guardian if under eighteen (18) years of age or legally disabled, and the referring counselor, shall be given oral or written explanation of the charges against the applicant or client;
2. The applicant or client shall be given an explanation of the evidence on which the charges are based; and

3. The applicant or client shall be given an opportunity to present the opposing view of the facts relating to the charges;

(d) Due process procedures shall precede any suspension from CDPCRC, except when immediate removal of the applicant or client from CDPCRC is necessary, in the judgment of the director or a designee, to protect persons or property or to prevent disruption of CDPCRC programs. In such cases, the due process procedures shall follow the suspension as soon as possible, but in no case later than five (5) class days following the effective date of the suspension.

(2) Expulsion.

(a) The CDPCRC director or a designee may expel an applicant or client under the following conditions:

1. The offense results in the applicant or client being convicted of a felony or misdemeanor committed on CDPCRC property, or while under the CDPCRC's jurisdiction;

2. The offense is a repeat of an earlier offense for which the applicant or client was suspended;

3. The offense is an instance of a history of persistent misconduct, and efforts to cause a change in the applicant's or client's behavior have been unsuccessful;

4. The offense involves violence, and in the opinion of the director or a designee, others are likely to be harmed if the applicant or client remains at CDPCRC; or

5. The offense is a flagrant and willful violation of CDPCRC regulations, and in the opinion of the director or a designee, there is little likelihood that efforts to deter the applicant or client from committing similar offenses will be successful.

(b) No expulsion shall occur until the following procedures have been followed:

1. The director shall appoint a person to review the expulsion decision;
2. The person designated to review the decision shall set a time for a hearing, within ten (10) class days of the proposed date of the expulsion;
3. The individual involved, and the parents or guardian if the individual is under eighteen (18) years of age or legally disabled, shall be informed of the nature of the charges and the time and date set for the hearing;
4. The individual involved and the parents or guardian, if the individual is under eighteen (18) years of age or legally disabled, shall be informed of the right to appear at the hearing and to be represented by counsel or other representation;
5. The hearing shall be held, and the individual involved and the representative shall have the right to present evidence in the applicant's or client's behalf and to cross-examine witnesses; and

6. The hearing shall stand in place of the agency expedited administrative review requirement, and the applicant or client and the representative shall be informed of the right to a fair hearing.

(c) Whenever a CDPCRC enrollee is informed of the intent to suspend or expel, the individual shall be also informed of the availability of the Client Assistance Program.

(d) An applicant or client who is dissatisfied with the results of the expedited administrative review, he may request an impartial hearing within forty-five (45) days.

Section 6. Attendance Policy. (1) Students shall be treated uniformly in terms of their attendance at CDPCRC. Each classroom instructor shall maintain a uniform attendance accounting procedure.

(2) The instructor or training supervisor shall determine when an absence or tardy from a scheduled class is excused or unexcused.

GEORGE R. SIEMENS, JR., Chairman

APPROVED BY AGENCY: September 19, 1989

FILED WITH LRC: October 5, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing has been scheduled on November 28, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its September meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Frankfort, Kentucky 40601, on or before November 23, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kathy Williams

(1) Type and number of entities affected: All applicants and clients of the Office of Vocational Rehabilitation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect cost or savings. This regulation is a continuation of a previous regulation which was repealed.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no additional paperwork other than that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no additional information or comment.

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation sets standards for admission to and discharge from the Carl D. Perkins Comprehensive Rehabilitation Center.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to adopt such policies and procedures as is necessary for the administration of the vocational rehabilitation program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No federal standards exist for the governance of state owned and operated facilities. This regulation sets standards for admission and discharge which are necessary for service delivery at the Carl D. Perkins Comprehensive Rehabilitation Center.

EDUCATION & HUMANITIES CABINET

Department for Education
Office of Vocational Rehabilitation

706 KAR 1:100. Admission and discharge from Colonial Inn Rehabilitation Facility, work training centers and community facilities.

RELATES TO: KRS 163.140

STATUTORY AUTHORITY: KRS 163.140

NECESSITY AND FUNCTION: KRS 163.140 directs the State Board for Adult, Vocational Education and Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Office of Vocational Rehabilitation. This regulation establishes criteria for the provision of services by the Colonial Inn Rehabilitation Facility, work training centers, and community facilities.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

Section 2. Colonial Inn Rehabilitation Facility Admissions. (1) Applicants or clients admitted to the Colonial Inn Rehabilitation Facility shall meet the following conditions:

(a) Applicants or clients shall have been determined eligible for rehabilitation services, or eligible for employability evaluation, by the Office of Vocational Rehabilitation; and

(b) Applicants or clients shall continue to be

served by Central State Hospital, by Seven Counties Mental Health, or by another public or private vendor of mental health services.

(2) No applicant or client admitted for services at the Colonial Inn Rehabilitation Facility shall be considered a permanent resident of that facility.

(3) No applicant or client shall be admitted to the Colonial Inn Rehabilitation Facility if any of the following conditions exist:

(a) The applicant's or client's medical or behavioral condition represents a risk to the health or safety of self or others;

(b) The applicant or client is unable, for reasons of physical or mental health, to perform routine activities of daily living or to engage in job-search activities; or

(c) The applicant or client is unable to administer medication without assistance.

(4) Applicants or clients admitted to the Colonial Inn Rehabilitation Facility shall be assessed for room and board in accordance with the following schedule:

(a) Those applicants or clients who receive ten (10) dollars or less per week in income shall not be charged for room and board.

(b) Those applicants or clients who receive more than ten (10) dollars per week in income shall be charged seventy (70) percent of the amount exceeding ten (10) dollars, up to a maximum of twenty-one (21) dollars.

(5) Applicants or clients admitted to the Colonial Inn Rehabilitation Facility shall be responsible for the following activities:

(a) Seeking employment in the local community;

(b) Continuing treatment with Seven Counties Mental Health or with a private physician or other treatment facility, if further treatment is needed;

(c) Performing routine activities of daily living; and

(d) Administering their own medications.

Section 3. Colonial Inn Rehabilitation Facility Discharges. (1) The following conditions shall be sufficient for discharge from the Colonial Inn Rehabilitation Facility:

(a) The client or applicant has been charged for room and board, and fails to pay for two (2) consecutive weeks;

(b) The applicant or client is unwilling or unable to seek employment;

(c) The applicant's or client's medical or behavioral condition becomes such that it represents a risk to the health or safety of self or others;

(d) The applicant or client is unwilling or unable to perform routine activities of daily living;

(e) The applicant or client consistently fails to administer medication responsibly, and efforts to solve the problems are unsuccessful;

(f) The applicant or client wishes to leave, and cannot be convinced to stay; or

(g) The applicant or client obtains employment, and is capable of living independently.

(2) No applicant or client shall be discharged involuntarily from the Colonial Inn Rehabilitation Facility without ten (10) working days notice, unless the applicant or client must be removed from the facility to prevent harm to persons or property or to prevent serious disruption of the facility's program.

Section 4. Work Training Centers Admissions and Discharges. (1) Individuals admitted to Office of Vocational Rehabilitation work training centers shall be applicants or clients of the Office of Vocational Rehabilitation.

(2) The determination of whether an individual shall be admitted to a work training center shall be made by the agency staff.

(3) No applicant or client shall be admitted to a work training center if there is evidence that the individual's medical or behavioral condition represents a risk to the health or safety of self or others.

(4) The following conditions shall be sufficient for discharge from Office of Vocational Rehabilitation work training centers:

(a) The applicant or client completes the program goals, and no further services are needed from the work training center;

(b) The applicant's or client's medical or behavioral condition is such that one (1) of the following is true:

1. The applicant or client represents a risk to the health or safety of himself or others;

2. The applicant or client is unable to pursue the program goals.

(c) The applicant or client wishes to leave the work training center, and cannot be convinced to stay; or

(d) The client obtains employment.

(5) The agency staff shall determine when it is appropriate to discharge an applicant or client from a work training center.

(6) No applicant or client shall be discharged involuntarily from a work training center without ten (10) working days notice, unless:

(a) Removal of the applicant or client from the work training center is necessary to prevent harm to persons or property, or to prevent disruption of the center's program.

(b) The mental hospital in which the applicant or client is in residence discharges the applicant or client, and the home area is too distant to allow the work training center program to continue.

Section 5. Community Facilities. (1) The Office of Vocational Rehabilitation shall utilize existing rehabilitation facilities to the maximum extent feasible to provide vocational rehabilitation services to individuals with disabilities in accordance with the state plan for rehabilitation facilities.

(2) The Office of Vocational Rehabilitation may utilize out-of-state facilities when necessary services are not available in Kentucky.

(3) The Office of Vocational Rehabilitation may utilize privately owned and operated facilities. Vocational services shall be purchased under a client services agreement solely from facilities which maintain accreditation through the Commission on Accreditation of Rehabilitation Facilities (CARF).

(4) The agency shall not be obligated to purchase services solely on the basis of accreditation. For occasional purchase of services, CARF accreditation shall not be required; however, the agency shall seek services that are of comparable quality. (For occasional purchase of services from facilities not covered by a client services agreement, the agency may set or use an established fee.)

(5) The Comprehensive Accounting and Reporting System (CARS) which conforms to the cost principles set forth in the 34 CFR Part 74,

Administration of Grants, shall be utilized to determine allowable cost for facilities providing volume services under a client service agreement. A facility entering into such an agreement shall maintain an accounting system with the capacity to identify cost by program and shall make all fiscal and client documents available for audit or examination by the Office of Vocational Rehabilitation.

GEORGE R. SIEMENS, JR., Chairman

APPROVED BY AGENCY: September 19, 1989

FILED WITH LRC: October 5, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing has been scheduled on November 28, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its September meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Frankfort, Kentucky 40601, on or before November 23, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kathy Williams

(1) Type and number of entities affected: All applicants and clients of the Office of Vocational Rehabilitation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect cost or savings. This regulation is a continuation of a previous regulation which was repealed.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no additional paperwork other than that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no additional information or comment.

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation establishes standards for admission to and discharge from agency operated facilities.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to adopt such policies and procedures as is necessary for the administration of the Office of Vocational Rehabilitation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No federal standards exist for the governance of state owned and operated facilities. This regulation sets standards for admission and discharge which are necessary for service delivery at state operated facilities.

EDUCATION & HUMANITIES CABINET

Department for Education

Office of Vocational Rehabilitation

706 KAR 1:110. Office of Vocational Rehabilitation appeal procedures.

RELATES TO: KRS 163.140, 163.160, 29 USC §722

STATUTORY AUTHORITY: KRS 163.140

NECESSITY AND FUNCTION: KRS 29 USC §722(d) requires state procedures for the review of determinations made by rehabilitation personnel for basic rehabilitation and independent living services; KRS 163.160 accepts and agrees to comply with federal vocational rehabilitation Acts; and KRS 163.140 sets forth rule-making authority with respect to the state vocational rehabilitation agency. This regulation establishes necessary appeals procedures and supersedes 706 KAR 1:050, which is being repealed.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" means the Kentucky Department of Education, Office of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

Section 2. Right of Appeal and Information. An applicant or client who is dissatisfied with any action concerning the furnishing or denial of vocational rehabilitation services shall have the right to appeal that action. All applicants or clients shall be informed of entitlements available under this regulation, including the names and addresses of such individuals with whom an appeal shall be filed.

Section 3. Client Assistance Program. The Office of Vocational Rehabilitation shall advise all applicants and clients of the existence of the Client Assistance Program, the services provided by the program, and how to contact the program representatives.

Section 4. Notification of Appeal Rights Regarding Eligibility. The Office of Vocational Rehabilitation shall provide each applicant or client with written notification of any agency decision concerning eligibility or ineligibility for services pursuant to federal guidelines.

Section 5. Notification of Appeal Rights Regarding an Individualized Written Rehabilitation Program. Each client with an Individualized Written Rehabilitation Program (IWRP), shall receive notification of the means for appealing any IWRP decisions through an administrative review or impartial hearing.

Section 6. Choice of Appeal Procedures. (1) Within sixty (60) days of becoming aware, through the exercise of due diligence, an applicant or client may appeal any action taken by the agency.

(2) The request for review or hearing shall be made in writing.

(3) Applicants or clients may initially request an administrative review, or a more formal hearing before an impartial hearing officer as a means to resolve issues of dissatisfaction.

(4) The administrative review or expedited administrative review shall not delay an impartial hearing and its time frames, unless both the agency and the applicant or client agree to the delay.

(5) When both parties have agreed to delay time frames established by federal regulation, the applicant or client, if still dissatisfied, may request an impartial hearing no later than forty-five (45) days after receiving written notice of the administrative review decision or the expedited administrative review decision.

(6) An applicant or client who is dissatisfied with any determination made by agency staff concerning the furnishing or denial of services may request a review of that determination before an impartial hearing officer by writing the Associate Superintendent for Vocational Rehabilitation.

Section 7. Procedures for an Administrative Review. The following procedures shall be followed in an administrative review:

(1) The regional administrator shall designate a branch manager from a district not involved in the action in question to conduct the administrative review. The director of Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) shall designate the review officer for reviews involving CDPCRC.

(2) The administrative review shall be held

within fifteen (15) working days of receipt of the request.

(3) When practicable, the review shall be at a time and place convenient to the applicant or client requesting the review, and the individual shall be notified in writing as to the time and place of the review and the right to be represented at the review by counsel or a designated advocate.

(4) A report of the findings of the review shall be sent to the involved individual within fifteen (15) working days from the completion date of the review.

Section 8. Expedited Administrative Review. When there is an agency initiated change resulting in a discontinuation of a service set forth in an IWRP, the following procedures shall be observed:

(1) The client shall be notified in writing at least ten (10) working days before the effective date of the proposed change; and

(2) The client's request for a review shall be made before the effective date of the proposed change. Should the client request an expedited administrative review, services shall continue until the review determination is received in writing, but in any case, no longer than thirty (30) days from the effective date of the proposed change.

Section 9. Hearing. Should an applicant or client be dissatisfied with any determinations made by the agency staff concerning the furnishing or denial of services or the findings and decision of an administrative review, the affected applicant or client may request a hearing by writing the Associate Superintendent for Vocational Rehabilitation. The following procedures shall be followed:

(1) An impartial hearing officer who has a background and experience in, and knowledge of, the delivery of vocational rehabilitation services; who has not taken part in the action under consideration; who is not an employee of the Office of Vocational Rehabilitation; and who has no personal or financial investment in the outcome of the hearing shall conduct a formal hearing.

(2) The hearing shall be held within forty-five (45) days after receipt of the initial request for appeal. Reasonable time extensions may be made for good cause shown by a party or at the request of both parties.

(3) When practicable, the hearing shall be held at a time and place convenient to the applicant or client requesting the hearing; and the applicant or client shall be notified by the hearing officer in writing as to the time and place of the hearing and the right to be represented at the hearing by counsel or by a designated advocate.

(4) Agency staff involved in the action in dispute shall be present at the hearing. The applicant or client or a designated representative and the agency representative shall have the opportunity for cross-examination; to present evidence, information and witnesses; to examine all documents submitted by the Office of Vocational Rehabilitation and to examine all documents submitted by the applicant or client or a representative.

(5) The decision of the impartial hearing officer shall set forth the issues, relevant

facts brought forth at the hearing, the pertinent provisions in the state plan and the Rehabilitation Act on which the decision is based and the reasoning that led to the decision.

(6) The verbatim transcript of the testimony presented during the hearing, together with all exhibits filed in the proceedings, shall constitute the exclusive record for the decision.

(7) The individual or designated representative and the Associate Superintendent of the Office of Vocational Rehabilitation shall be sent the decision within thirty (30) days from the completion of the hearing, unless both parties agree to a reasonable time extension to allow the hearing officer to review the transcript before finalizing the decision.

(8) If the associate superintendent elects not to review the impartial hearing officer's decision, that decision becomes the final state agency action.

(9) If the associate superintendent elects to review the impartial hearing officer's decision, within twenty (20) days of the mailing of the decision to the individual the client or applicant shall be informed in writing of the intent to review the decision in whole or in part.

(10) The decision of the associate superintendent to review any impartial hearing officer's decision shall be based on the following standards:

(a) Whether the hearing officer's decision was arbitrary, capricious, an abuse of discretion, or otherwise unreasonable.

(b) Whether the hearing officer's decision was supported by substantial evidence, i.e., consistent with facts and applicable federal and state laws and regulations.

(c) Whether, in reaching the decision, the impartial hearing officer gave appropriate and adequate interpretation to such factors as:

1. The federal regulations and policies as they apply to the specific issue(s) in question;
2. State laws and regulations as they relate to the issue(s) in question;
3. The state plan as it applies to the specific issue(s) in question;
4. The state procedures manual as it may apply to the specific issue(s) in question;
5. Key portions of conflicting testimony;
6. State agency options in the delivery of services where such options are permissible by the federal regulations; and
7. Restrictions in federal regulations with regard to such supportive services as maintenance and transportation.

(11) If the associate superintendent elects to review the decision of the impartial hearing officer, the applicant or client shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.

(12) The associate superintendent's review shall be limited to the findings with which the associate superintendent took issue and shall be a paper review of the transcript of testimony and exhibits presented at the hearing, the hearing officer's written decision, and any additional relevant written documentation submitted by the applicant or client or a representative.

(13) A final decision stating the findings and grounds for the decision shall be made in writing by the associate superintendent within thirty (30) days of the associate

superintendent's decision to review the decision of the impartial hearing officer. The applicant or client may request a delay in order to submit additional evidence bearing on the final decision if the associate superintendent agrees to a reasonable time extension.

(14) When a final decision is made, a copy of that decision shall be provided to the applicant or client or a representative.

(15) The associate superintendent shall not delegate responsibility to make any such final decision to any other officer or employee of the Office of Vocational Rehabilitation.

(16) The decision of the associate superintendent shall be the final state agency action.

Section 10. Legal Counsel. The Office of Vocational Rehabilitation shall not provide legal counsel or reimburse the costs of legal counsel for an applicant or client who appeals an action concerning the furnishing or denial of services.

Section 11. 706 KAR 1:050, Office of Vocational Rehabilitation appeals procedures, is hereby repealed.

GEORGE R. SIEMENS, JR., Chairman

APPROVED BY AGENCY: September 19, 1989

FILED WITH LRC: October 5, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing has been scheduled on November 28, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its September meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Frankfort, Kentucky 40601, on or before November 23, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kathy Williams

(1) Type and number of entities affected: All applicants and clients of the Office of Vocational Rehabilitation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect cost or savings. This regulation is a continuation of a previous regulation which was repealed.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Reporting and paperwork requirements cannot be anticipated since those requirements will be contingent on the number of appeals. The only other reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings that can be anticipated. Cost will relate to the number of hearings requested.

1. First year: None

2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting and paperwork requirements cannot be anticipated since those requirements will be contingent on the number of appeals. The only other additional paperwork is that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is designated by KRS Chapter 13A and by federal regulation as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no additional information or comment.

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation establishes procedures for client appeals as required in the federal mandate.

3. Minimum or uniform standards contained in the federal mandate. State agencies are required to adopt such policies and procedures as is necessary to assure clients an administrative avenue for resolving disputes.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

LABOR CABINET

Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:031. Repeal of existing regulations.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 13A.224(10) states that an administrative regulation shall not incorporate all material relating to a general subject matter in one (1) proposed administrative regulation. In compliance with the statutes this administrative agency has divided its regulations governing occupational safety and health, which incorporate substantial material, into specific topics. Accordingly, the existing regulations must be repealed.

Section 1. 803 KAR 2:020, 803 KAR 2:027, 803

KAR 2:030 and 803 KAR 2:032 are repealed.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: October 12, 1989

FILED WITH LRC: October 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 1989, 9 a.m., immediately following the meeting of the Kentucky Occupational Safety and Health Standards Board, in the Kentucky Room, Capital Plaza Hotel, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 23, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Guy B. Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:020, 803 KAR 2:027, 803 KAR 2:030, and 803 KAR 2:032 are repealed. The subject matter contained therein are divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive changes are made in this regulation.

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: 803 KAR 2:020, 803 KAR 2:027, 803 KAR 2:030, and 803 KAR 2:032 are repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's

regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET

**Department of Workplace Standards
Kentucky Occupational Safety and Health**

803 KAR 2:312. Adoption of 29 CFR Part 1910.166-.171.

RELATES TO: KRS Chapter 338, 29 CFR 1910

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910.166-.171 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: October 12, 1989

FILED WITH LRC: October 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 1989, 9 a.m., immediately following the meeting of the Kentucky Occupational Safety and Health Standards Board, in the Kentucky Room, Capital Plaza Hotel, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 23, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Guy B.

Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:020 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive changes are made in this regulation.

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

803 KAR 2:020 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET

**Department of Workplace Standards
Kentucky Occupational Safety and Health**

803 KAR 2:401. Adoption of 29 CFR Part 1926.10-.20.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate

reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.10-.20 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: October 12, 1989

FILED WITH LRC: October 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 1989, 9 a.m., immediately following the meeting of the Kentucky Occupational Safety and Health Standards Board, in the Kentucky Room, Capital Plaza Hotel, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 23, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Guy B. Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive changes are made in this regulation.

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state

and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: 803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET

Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:402. Adoption of 29 CFR Part 1926.20-.32.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.20-.32 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: October 12, 1989

FILED WITH LRC: October 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 1989, 9 a.m., immediately following the meeting of the Kentucky Occupational Safety and Health Standards Board, in the Kentucky Room, Capital Plaza Hotel, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November

23, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Guy B. Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive changes are made in this regulation.

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: 803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:407. Adoption of 29 CFR Part 1926.250-.252.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.250-.252 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: October 12, 1989

FILED WITH LRC: October 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 1989, 9 a.m., immediately following the meeting of the Kentucky Occupational Safety and Health Standards Board, in the Kentucky Room, Capital Plaza Hotel, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 23, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Guy B. Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter

contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive changes are made in this regulation.

- (1) Type and number of entities affected:
 - (a) Direct and indirect costs or savings to those affected:
 - 1. First year:
 - 2. Continuing costs or savings:
 - 3. Additional factors increasing or decreasing costs (note any effects upon competition):
 - (b) Reporting and paperwork requirements:
- (2) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 - 1. First year:
 - 2. Continuing costs or savings:
 - 3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements:
 - (3) Assessment of anticipated effect on state and local revenues:
 - (4) Assessment of alternative methods; reasons why alternatives were rejected:
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (6) Any additional information or comments:

803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:408. Adoption of 29 CFR Part 1926.300-.305.

RELATES TO: KRS Chapter 338
 STATUTORY AUTHORITY: KRS Chapter 13A
 NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.300-.305 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services

Administration. These standards are hereby incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: October 12, 1989

FILED WITH LRC: October 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 1989, 9 a.m., immediately following the meeting of the Kentucky Occupational Safety and Health Standards Board, in the Kentucky Room, Capital Plaza Hotel, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 23, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Guy B. Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive changes are made in this regulation.

- (1) Type and number of entities affected:
 - (a) Direct and indirect costs or savings to those affected:
 - 1. First year:
 - 2. Continuing costs or savings:
 - 3. Additional factors increasing or decreasing costs (note any effects upon competition):
 - (b) Reporting and paperwork requirements:
- (2) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 - 1. First year:
 - 2. Continuing costs or savings:
 - 3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements:
 - (3) Assessment of anticipated effect on state and local revenues:
 - (4) Assessment of alternative methods; reasons why alternatives were rejected:
 - (5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
 - (a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: 803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET

Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:412. Adoption of 29 CFR Part 1926.500-.502.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.500-.502 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: October 12, 1989

FILED WITH LRC: October 13, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 1989, 9 a.m., immediately following the meeting of the Kentucky Occupational Safety and Health Standards Board, in the Kentucky Room, Capital Plaza Hotel, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 23, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

803 KAR 2:030 is repealed. The subject matter contained therein is divided according to topics, into several separate regulations, including this one, in order to comply with KRS 13A.224(10). No substantive changes are made in this regulation.

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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(3) Assessment of anticipated effect on state and local revenues:

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(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: 803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET

Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:415. Adoption of 29 CFR Part 1926.650-.653.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference

established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.650-.653 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.

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CAROL M. PALMORE, Chairman

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

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(b) Reporting and paperwork requirements:

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(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

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(6) Any additional information or comments: 803 KAR 2:030 is repealed.

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET

Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:417. Adoption of 29 CFR Part 1926.750-.752.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.750-.752 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

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TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:419. Adoption of 29 CFR Part 1926.850-.860.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

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TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

LABOR CABINET

Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:422. Adoption of 29 CFR Part 1926.1000-.1003.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

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REGULATORY IMPACT ANALYSIS

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LABOR CABINET

Department of Workplace Standards Kentucky Occupational Safety and Health

803 KAR 2:423. Adoption of 29 CFR Part 1926.1050-.1051.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.

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REGULATORY IMPACT ANALYSIS

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CABINET FOR HUMAN RESOURCES

Department for Social Insurance Division of Management & Development

904 KAR 2:025. Kentucky child support guidelines.

RELATES TO: KRS 205.715-205.800, 403.210, 403.215, 405.405-405.530, 530.050

STATUTORY AUTHORITY: 194.050, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility for administering the child support program in accordance with Title IV-D of the Social Security Act, Title 45 CFR Sections 301, 302, 303, 304, 305, 306, and

307. In addition, KRS 405.520 authorizes the cabinet to adopt regulations necessary to prevent conflict with federal laws and regulations or the loss of federal funds. The Family Support Act, 42 U.S.C. §667, requires states to establish guidelines for child support award amounts within the state effective October 13, 1989 as a condition for having its state plan approved. This regulation establishes the Kentucky Child Support Guidelines including instructions, worksheet, and scales for the determination of a parent's monthly child support obligation.

Section 1. Instructions for Use. The worksheet allows the determination of the basic monthly child support payment. This process is based on the concept that both parents are responsible for the financial support of their children. It uses a percentage allocation of both parent's income to determine the basic monthly amount of child support, and divides responsibility for each parent's share. This method assumes that the custodial parent's share is spent directly on the child, and fixes the amount of cash contribution from the noncustodial parent.

(1) Monthly gross income. The total gross monthly income of each parent shall be entered on Line 1(1) of the worksheet. In the first column, enter the income of the custodial parent. The noncustodial parent's income shall be written in the second column.

(a) Definition. For purposes of this guideline, "income" is defined as actual gross income of the parent, if employed to full capacity, or potential income if unemployed or underemployed. Gross income of each parent shall be determined as specific below and entered on Line 1(1).

(b) Gross income. Gross income includes income from any source, except as excluded below, and includes but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and alimony or maintenance received. Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI) and food stamps.

(c) Income from self-employment or operation of a business. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Straight line depreciation, using IRS guidelines, is the only allowable method of calculating depreciation expense in determining gross income. Specifically excluded from ordinary and necessary expenses for purposes of this guideline are investment tax credits or any other business expenses determined to be inappropriate for determining gross income for purposes of calculating child support. In general, income and expenses from self-employment or operation of a business shall be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support

obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursement or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Such payments might include a company car, free housing, or reimbursed meals.

(d) Potential income. If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a determination of potential income shall not be made for a parent that is physically or mentally incapacitated or is caring for a very young child (age three (3) or younger) for whom the parents owe a joint legal responsibility. Determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community.

(e) Income verification. Income statements of the parents shall be verified with documentation of both current and past income. Suitable documentation of current earnings (at least one (1) full month) includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current income must be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period.

(2) Health insurance. For each child support order, consideration shall be given to provision of adequate health insurance coverage for the child. Such health insurance shall normally be provided by the parent that can obtain the most comprehensive coverage through an employer at least cost. If either parent does carry health insurance for the child(ren) due support, the cost of that coverage shall be deducted from gross income on Line 2 of the worksheet. If coverage is provided through an employer, only the employee portion shall be deducted. Note that the cost of the parent's coverage is included in this deduction if the parent is jointly covered with the children under a family policy.

(3) Pre-existing child support obligations. The amount(s) of any pre-existing court or administrative order(s) for child support shall be deducted from gross income to the extent payment is actually made under such order(s).

(4) Custodial parent disregard. The custodial parent is credited with a self-support reserve of \$500 per month. That amount shall be subtracted from the total gross income. The \$500 self-support reserve is an income disregard for the custodial parent. It allows the custodial parent to retain some income for personal purposes. The self-support reserve is set at the poverty level for one (1) individual.

(5) Adjusted monthly income. The deductions of Line 2, 3, and 4 shall be subtracted from the monthly gross income as entered on Line 1. The adjusted amount of income for each parent shall be entered on Line 5 in the appropriate column.

(6) Combined parental income. The monthly adjusted income amounts for both parents shall be added, and the total shall be entered on Line 6, Column C.

(7) Percentage of combined parental income.

Each parent's percentage contribution to the combined parental income shall be determined. Divide each parent's adjusted monthly income figure on Line 5 by the total amount of Line 6, Column C. Enter the percentage amounts on Line 7.

(8) Base child support obligation. Using the total adjusted monthly parental income amount on Line 6, Column C, refer to the Chart of Child Support Obligations. The number of children refers to children for whom the parents share joint legal responsibility and for whom support is being sought. Enter the amount on the chart on Line 8. For combined monthly adjusted parental gross income amounts falling between amounts shown in the schedule, basic child support amounts shall be extrapolated.

(9) Child care costs. Child care costs, if any, incurred due to employment or job search of either parent, or incurred while receiving elementary or secondary education, or higher education or vocational training which will lead to employment, shall be listed on Line 9 of the worksheet. Such child care costs must be reasonable; that is, such costs shall not exceed the level required to provide quality care for the child(ren) from a licensed source. Child care costs required for active job search are allowable on the same basis as costs required in connection with employment.

(10) Total monthly child support and child care obligation. Add Lines 8 and 9 to obtain the total monthly child support and child care support obligation of both parents. Both parents share responsibility for this amount.

(11) Parental obligations. Each parent's share of the total monthly child support payment is figured using the total monthly obligation and the percentages calculated on Line 7. Multiply the amount on Line 10 by the percentage amounts on Line 7.

(12) Monthly child support obligation. The noncustodial parent's share of the total obligation shall be entered on Line 12. That amount is the monthly payment for child support.

(13) Split custody. When each parent has physical custody of at least one (1) of the children, a theoretical support payment shall be determined for each parent for the children in the custody of the other. The obligations shall then be offset, with the parent owing the larger amount being required to pay the difference between the two (2) amounts to the other parent.

Section 2. Adjustments to the Monthly Award.

(1) Adjustment for extended visitation with the noncustodial parent. The amount of the monthly payment may be adjusted by the court, if the child(ren) are in the physical custody of the noncustodial parent for a period of thirty (30) consecutive days or more. The monthly payment may be reduced to no more than half of the regular amount during the period of extended visitation. This adjustment does not refer to legal custody, but to periods of change in the child's physical custody. Changes in payment amount due to this adjustment do not appear on the worksheet, but are to be addressed in the court order.

(2) Adjustment for extraordinary medical expenses. Extraordinary medical expenses are costs for the treatment of an illness or injury which are not covered by insurance, and which exceed \$100 for a single period of illness, injury or condition. These may include costs which are necessary for the treatment of

uninsured chronic medical problems, such as ear infections, asthma treatments, allergies, or orthodontic treatment. Parental responsibility for payment shall be split according to the percentages of parental contribution to combined parental income (see Line 7 of the worksheet). Payment responsibility shall be addressed in the court order, rather than included on the worksheet.

(3) Adjustment for extraordinary educational expenses. Payments for extraordinary educational expenses, such as the costs of special or private schooling, or for higher education must be approved by the court.

Section 3. Child Support Worksheet. The Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation, which is set out on the following pages, shall be used to calculate the monthly child support obligation.

Section 4. Guidelines Scales. The child support obligation shall be determined in accordance with the Commonwealth of Kentucky Basic Child Support Obligation, which is set out on the following pages. Upon a written finding that the amount calculated using the Basic Child Support Obligation guideline is unjust or inappropriate in a particular case citing one (1) or more of the following criteria, an appropriate adjustment of the guideline award may be made:

- (1) A child's medical or dental needs or other extraordinary needs;
- (2) A child's educational needs;
- (3) A party's own extraordinary needs, such as medical expenses;
- (4) Shared physical custody arrangements wherein each parent exercises physical custody for more than thirty (30) percent of the calendar year, defined as more than thirty (30) percent of all overnights during the year;
- (5) The independent financial resources, if any, of the child(ren);
- (6) Combined parental income in excess of the Kentucky child support guideline;
- (7) Any similar factor of an extraordinary nature specifically identified which would make application of the guidelines inappropriate.

(See forms on pages following
Federal Mandate Analysis Comparison)

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, Secretary

APPROVED BY AGENCY: October 2, 1989

FILED WITH LRC: October 9, 1989 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1989 at 9 a.m. at the Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1989, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written

notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: 102,029 cases.

(a) Direct and indirect costs or savings to those affected: It is anticipated these guidelines will increase collections.

1. First year: \$259,200.

2. Continuing costs or savings: It is estimated that over the next 4 years collections would increase by \$2 million.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Payment of appropriate child support by the absent parent should result in a significant decrease in AFDC benefits paid out.

(b) Reporting and paperwork requirements: All IV-D orders that are established or modified are reported to the federal government.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state

and local revenues: Failure to implement the guidelines will result in the potential loss of \$12 million to \$13 million in federal funds for the IV-A and IV-D programs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Federal and state statutes mandate that child support awards be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Family Support Act of 1988.

2. State compliance standards. This regulation implements the Kentucky Child Support Guidelines.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

COMMONWEALTH OF KENTUCKY WORKSHEET FOR MONTHLY CHILD SUPPORT OBLIGATION

	A. CUSTODIAL PARENT	B. NON-CUSTODIAL PARENT	C. BOTH PARENTS
1. Monthly Gross Income	\$	\$	
2. Deduction for Payment of Child's Health Insurance Premium	\$-	\$-	
3. Deduction for Other Court-Ordered Child Support	\$-	\$-	
4. Custodial Parent Disregard	\$- 500		
5. Adjusted Monthly Income	\$	\$	
6. Combined Parental Income			\$
7. Percentage of Combined Parental Income	%	%	
8. Base Child Support Obligation			\$
9. Work-Related Child Care Cost			\$
10. Total Monthly Obligation (Add lines 8 + 9)			\$
11. Parental Obligations (Multiply line 10 by the percentage amounts on line 7)	\$	\$	
12. Total Monthly Child Support Obligation		\$	

INSTRUCTIONS FOR USE:

1. Enter each parent's gross monthly income.
2. Enter the payment for child(ren)'s health insurance.
3. Enter child support paid under a pre-existing court order.
4. Enter a \$500 deduction from the custodial parent's income in Column A.
5. Subtract any amounts on lines 2, 3, and 4 from the amounts on line 1; if less than 0, enter 0.
6. Add the amounts on line 5 to obtain combined parental income.
7. Divide each of the amounts on line 5 by the total on line 6.
Enter the percentage amounts on line 7.
8. Refer to the Guideline to determine the base support obligation.
9. Enter monthly payment for child care.
10. Add lines 8 and 9. This is the total monthly obligation.
11. Multiply the total monthly obligation by the percentage amounts from line 7.
12. The dollar value of the non-custodial parent's percentage share of the total monthly obligation on line 11B becomes the support obligation.

COMMONWEALTH OF KENTUCKY

BASIC MONTHLY CHILD SUPPORT OBLIGATION: GUIDELINE

Page 1 of 3

Combined Monthly Adjusted Parental Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
\$100	\$60	\$60	\$60	\$60	\$60	\$60
\$200	\$70	\$70	\$70	\$70	\$70	\$70
\$300	\$80	\$80	\$80	\$80	\$80	\$80
\$400	\$90	\$90	\$90	\$90	\$90	\$90
\$500	\$100	\$105	\$110	\$115	\$120	\$125
\$600	\$120	\$125	\$130	\$135	\$140	\$145
\$700	\$140	\$156	\$161	\$166	\$171	\$176
\$800	\$160	\$203	\$208	\$213	\$218	\$223
\$900	\$180	\$261	\$266	\$271	\$276	\$281
\$1,000	\$195	\$303	\$325	\$330	\$335	\$340
\$1,100	\$212	\$324	\$384	\$389	\$394	\$399
\$1,200	\$229	\$346	\$433	\$446	\$451	\$456
\$1,300	\$246	\$367	\$460	\$504	\$510	\$515
\$1,400	\$262	\$392	\$491	\$554	\$576	\$582
\$1,500	\$277	\$417	\$522	\$588	\$642	\$650
\$1,600	\$293	\$437	\$548	\$618	\$674	\$717
\$1,700	\$308	\$458	\$574	\$647	\$706	\$755
\$1,800	\$322	\$478	\$599	\$675	\$736	\$788
\$1,900	\$336	\$495	\$620	\$699	\$763	\$816
\$2,000	\$350	\$512	\$642	\$723	\$789	\$844
\$2,100	\$364	\$529	\$663	\$747	\$815	\$872
\$2,200	\$376	\$546	\$684	\$771	\$841	\$900
\$2,300	\$389	\$563	\$706	\$795	\$868	\$928
\$2,400	\$401	\$580	\$727	\$819	\$894	\$956
\$2,500	\$413	\$597	\$749	\$843	\$920	\$984
\$2,600	\$424	\$614	\$770	\$867	\$946	\$1,012
\$2,700	\$435	\$630	\$790	\$889	\$970	\$1,038
\$2,800	\$445	\$646	\$809	\$911	\$994	\$1,064
\$2,900	\$455	\$662	\$829	\$934	\$1,019	\$1,090
\$3,000	\$465	\$677	\$849	\$956	\$1,043	\$1,116
\$3,100	\$475	\$693	\$868	\$978	\$1,067	\$1,142
\$3,200	\$485	\$709	\$888	\$1,001	\$1,092	\$1,168
\$3,300	\$495	\$725	\$908	\$1,023	\$1,116	\$1,194
\$3,400	\$506	\$741	\$928	\$1,045	\$1,140	\$1,220
\$3,500	\$516	\$757	\$947	\$1,067	\$1,164	\$1,246
\$3,600	\$526	\$773	\$967	\$1,090	\$1,189	\$1,272
\$3,700	\$536	\$790	\$988	\$1,113	\$1,215	\$1,299
\$3,800	\$548	\$808	\$1,011	\$1,139	\$1,243	\$1,329
\$3,900	\$559	\$826	\$1,033	\$1,164	\$1,270	\$1,359

COMMONWEALTH OF KENTUCKY

BASIC MONTHLY CHILD SUPPORT OBLIGATION: GUIDELINE

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Combined Monthly Adjusted Parental Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
\$4,000	\$571	\$844	\$1,056	\$1,190	\$1,298	\$1,388
\$4,100	\$580	\$862	\$1,078	\$1,215	\$1,326	\$1,418
\$4,200	\$592	\$880	\$1,101	\$1,240	\$1,353	\$1,448
\$4,300	\$603	\$898	\$1,123	\$1,266	\$1,381	\$1,477
\$4,400	\$615	\$916	\$1,146	\$1,291	\$1,409	\$1,507
\$4,500	\$626	\$933	\$1,161	\$1,316	\$1,435	\$1,535
\$4,600	\$636	\$949	\$1,181	\$1,338	\$1,459	\$1,561
\$4,700	\$647	\$964	\$1,200	\$1,360	\$1,483	\$1,586
\$4,800	\$657	\$980	\$1,220	\$1,381	\$1,507	\$1,612
\$4,900	\$667	\$995	\$1,239	\$1,403	\$1,531	\$1,637
\$5,000	\$676	\$1,010	\$1,257	\$1,424	\$1,554	\$1,661
\$5,100	\$686	\$1,025	\$1,275	\$1,444	\$1,576	\$1,685
\$5,200	\$695	\$1,039	\$1,294	\$1,465	\$1,599	\$1,709
\$5,300	\$705	\$1,054	\$1,312	\$1,486	\$1,621	\$1,733
\$5,400	\$714	\$1,069	\$1,330	\$1,506	\$1,644	\$1,757
\$5,500	\$724	\$1,083	\$1,348	\$1,527	\$1,666	\$1,781
\$5,600	\$733	\$1,098	\$1,367	\$1,548	\$1,689	\$1,805
\$5,700	\$743	\$1,113	\$1,385	\$1,568	\$1,712	\$1,829
\$5,800	\$753	\$1,127	\$1,403	\$1,589	\$1,734	\$1,853
\$5,900	\$762	\$1,142	\$1,421	\$1,610	\$1,757	\$1,877
\$6,000	\$772	\$1,157	\$1,440	\$1,630	\$1,779	\$1,901
\$6,100	\$781	\$1,171	\$1,458	\$1,651	\$1,802	\$1,926
\$6,200	\$791	\$1,186	\$1,476	\$1,672	\$1,824	\$1,950
\$6,300	\$800	\$1,198	\$1,498	\$1,690	\$1,844	\$1,970
\$6,400	\$808	\$1,209	\$1,511	\$1,705	\$1,860	\$1,988
\$6,500	\$816	\$1,219	\$1,524	\$1,720	\$1,876	\$2,005
\$6,600	\$823	\$1,230	\$1,538	\$1,735	\$1,893	\$2,023
\$6,700	\$830	\$1,240	\$1,551	\$1,750	\$1,909	\$2,040
\$6,800	\$837	\$1,251	\$1,564	\$1,764	\$1,925	\$2,058
\$6,900	\$844	\$1,261	\$1,577	\$1,779	\$1,942	\$2,075
\$7,000	\$851	\$1,272	\$1,591	\$1,794	\$1,958	\$2,093
\$7,100	\$858	\$1,282	\$1,604	\$1,809	\$1,975	\$2,110
\$7,200	\$865	\$1,293	\$1,617	\$1,824	\$1,991	\$2,127
\$7,300	\$872	\$1,303	\$1,630	\$1,839	\$2,007	\$2,145
\$7,400	\$879	\$1,313	\$1,644	\$1,854	\$2,024	\$2,162
\$7,500	\$885	\$1,324	\$1,657	\$1,869	\$2,040	\$2,179
\$7,600	\$891	\$1,333	\$1,668	\$1,881	\$2,053	\$2,194
\$7,700	\$896	\$1,342	\$1,679	\$1,893	\$2,066	\$2,208
\$7,800	\$901	\$1,350	\$1,691	\$1,905	\$2,079	\$2,223
\$7,900	\$907	\$1,359	\$1,702	\$1,917	\$2,093	\$2,238

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COMMONWEALTH OF KENTUCKY

BASIC MONTHLY CHILD SUPPORT OBLIGATION: GUIDELINE

Combined Monthly Adjusted Parental Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
\$8,000	\$912	\$1,368	\$1,713	\$1,929	\$2,106	\$2,252
\$8,100	\$917	\$1,377	\$1,724	\$1,941	\$2,119	\$2,267
\$8,200	\$922	\$1,386	\$1,736	\$1,953	\$2,133	\$2,281
\$8,300	\$928	\$1,395	\$1,747	\$1,965	\$2,146	\$2,296
\$8,400	\$933	\$1,404	\$1,758	\$1,977	\$2,159	\$2,311
\$8,500	\$938	\$1,413	\$1,769	\$1,989	\$2,173	\$2,325
\$8,600	\$944	\$1,421	\$1,780	\$2,002	\$2,186	\$2,340
\$8,700	\$949	\$1,430	\$1,792	\$2,014	\$2,199	\$2,354
\$8,800	\$954	\$1,437	\$1,800	\$2,024	\$2,210	\$2,366
\$8,900	\$958	\$1,444	\$1,809	\$2,033	\$2,220	\$2,376
\$9,000	\$962	\$1,450	\$1,817	\$2,042	\$2,230	\$2,387
\$9,100	\$966	\$1,457	\$1,825	\$2,052	\$2,241	\$2,398
\$9,200	\$971	\$1,463	\$1,833	\$2,061	\$2,251	\$2,408
\$9,300	\$975	\$1,470	\$1,842	\$2,070	\$2,261	\$2,419
\$9,400	\$979	\$1,476	\$1,850	\$2,079	\$2,271	\$2,430
\$9,500	\$983	\$1,483	\$1,858	\$2,089	\$2,281	\$2,440
\$9,600	\$988	\$1,489	\$1,866	\$2,098	\$2,291	\$2,451
\$9,700	\$992	\$1,496	\$1,874	\$2,107	\$2,301	\$2,461
\$9,800	\$996	\$1,502	\$1,883	\$2,117	\$2,311	\$2,472
\$9,900	\$1,000	\$1,508	\$1,891	\$2,126	\$2,321	\$2,483
\$10,000	\$1,005	\$1,515	\$1,899	\$2,165	\$2,331	\$2,493

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the October 4 and 5, 1989 Meeting

The October meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, October 4, 1989 at 1 p.m. and on Thursday, October 5, 1989 at 10 a.m. in Room 107. Representative Mark D. O'Brien, Chairman, called the meeting to order, and the secretary called the roll. On motion of Representative Bruce, seconded by Representative Kerr, the minutes of the September 5 and 6, 1989 meeting were approved.

Present October 4, 1989 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representatives Jim Bruce and Tom Kerr.

Present October 5, 1989 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representatives Jim Bruce, Ronny Layman and Tom Kerr.

Guests: Representative Ron Cyrus; Wilburn K. DeBruler, Personnel Board; Doug Bishop, Bill Bray, John C. Bridwell, Mary Cammack, Roy Clifton, Jr., Sandra Daniels, Charlie Dugan, Nate Durham, Gil Mischel, Warren O. Nash, III, Kathy Newton, Edgar C. Ross, Jack Royalty, Stanley A. Salchi, Donald R. Speer, Finance & Administration Cabinet; Deborah Cameron, Greg Holmes, Board of Dentistry; Bob Summers, Board for Proprietary Education; Pete Pfeiffer, Thomas A. Young, Department of Fish and Wildlife Resources; Sherri A. Evans, Jack Wilson, Natural Resources & Environmental Protection Cabinet; Michael Bradley, Ellen Tharpe, Corrections Cabinet; Sandy Pullen, Transportation Cabinet; Gary Bale, Akeel Zaheer, Department of Education; Raymond E. Wallace, Connie S. Whitehouse, Registry of Election Finance; Judge Armand Angelucci, William A. Miller, Department of Workers' Claims; Catherine C. Staib, Department of Alcoholic Beverage Control; Leroy Morgan, Patrick Watts, Department of Insurance; Joe Anderson, Barbara Coleman, Diana Disponentte, Ked R. Fitzpatrick, Eric Friedlander, William Gaddis, Dorman Harrod, Ron Holland, N. Clifton Howard, Randall Justice, Anita Moore, Delano Miller, Cabinet for Human Resources; Rosalie Frederick, Linda Shelburne, Allient Health System; Marilyn Smith, American International Health & Rehabilitation; Susie Jarboe, C.R.A., Sheri Yager, Capital Holding/Commonwealth Insurance; Alphonso Horrera, Comprehensive Medical Rehabilitation Center; Audrey Black, Comprehensive Rehabilitation Associates, Inc.; Jeff Jennings, Conferr Co.; Roseanna Cornett, Anna Ulshafer, Eckman/Freemen & Associates; Larry Miller, Gates McDonald & Co.; Joni Yeager, General Rehabilitation Services; Judy B. Long, Intracorp; Deborah Tharp, Donna Walker, KY Chapter American Physical Therapy Association; Therese Marshall, KY Chapter of National Association of Rehabilitation Professionals in the Private Sector; Judith Taylor, Ky Chapter Physical Therapists; Nancy Galvagni, KY Hospital Association; Bill Doll, KY Medical Association; Desna Ratcliff, KY Occupational Therapy Association; D. Ray Gillespie, KY Self Insurers Association; Carol Martin; Vicki Whitehead; Tim Freudenberg, Lt. Governor's Office.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Susan Eastman and Carla Arnold.

The Administrative Regulation Review Subcommittee met on October 4 and 5, 1989, and submits this report:

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Finance and Administration Cabinet: Purchasing
200 KAR 5:020 (Finance and Administration Cabinet Manual of Policies and Procedures.) Chairman O'Brien stated that legislative staff had not had the opportunity to review every document in what is a large amount of material. He suggested that agency personnel meet with Subcommittee staff at a future date to determine what, if any, changes were required in the material incorporated by reference. This regulation was amended by amending certain policies in the incorporated material, and by reflecting the date of these amendments in the body of the regulation.

General Government Cabinet: Board of Dentistry
201 KAR 8:015 (Registration of dental laboratories and technicians with board.) This regulation was amended to comply with the drafting requirements of KRS Chapter 13A and to clarify the meaning of certain sections.

Board for Proprietary Education
201 KAR 24:040 (Procedures for Hearings.) This regulation was amended to comply with the drafting requirements of KRS Chapter 13A and to delete Section 12 that would have imposed a fee as an assessment against a losing licensee or applicant, because such assessment or fee was not permitted by applicable statutes.

Corrections Cabinet: Office of the Secretary
501 KAR 6:030 (Kentucky State Reformatory.) Policy No. KSR 15-01-02 was amended to delete "(s)" to conform with the requirements of KRS 13A.222.

501 KAR 6:120 (Blackburn Correctional Complex.) BCC 08-05-01 was amended to include the responsibilities of the local fire department pursuant to KRS 227.240, and was amended to change "will" and "must" to "shall" or "may" in conformance with the requirements of KRS 13A.222.

Transportation Cabinet: Office of Aeronautics: Airport Safety Standards

602 KAR 20:020 (Issuance of landing area designation.) Section 4(1) of this regulation was amended to require that owners or operators of restricted use facilities notify the cabinet of any changes in ownership, use, operation, or facilities. Also, this section was amended to include the words "detrimental to safety" concerning changes made at a restricted use facility.

602 KAR 20:120 (Public use airport.) Sections 5(2) and 6(2) were amended by deleting the words "shall be" and insert in lieu thereof the word "is" to reflect that material is now being incorporated by reference.

**Public Protection and Regulation Cabinet:
Registry of Election Finance: Reports and Forms**

The following administrative regulations were amended to conform to the drafting requirements of KRS Chapter 13A, specifically to provide appropriate citations to statutory authority.

801 KAR 1:005 (Appointment of Campaign Treasurer Form.)

801 KAR 1:010 (Election finance statement forms: campaign contributions or expenditures in excess of three thousand dollars.)

801 KAR 1:020 (Candidate report of receipts and expenditures.)

801 KAR 1:040 (Political committee registration.)

**Labor Cabinet: Department of Workers' Claims:
Workers' Compensation Board**

803 KAR 25:100 (Procedures for workers' compensation rehabilitation.) The promulgating agency proposed several amendments to incorporate changes and clarifications in areas related to qualified rehabilitation coordinators, qualified rehabilitation facilities, and provisions of medical rehabilitation services subsequent to an evaluation. Further amendments were made in response to questions raised during review of the above proposed amendments as follows: (1) Amend Section 8(5) by adding the words "to provide rehabilitation services". This amendment is made to clarify that only those facilities licensed to provide rehabilitation services by the Cabinet for Human Resources may be qualified rehabilitation facilities. (2) Amend Section 8(6) to incorporate by reference certain sections of the 1989 CARF Standards Manual. (3) Amend Section(7)(a) to delete the "(s)" in conformance with the requirements of KRS Chapter 13A. (4) Amend Section 14(2) by designating October 4, 1989, as the date of the material incorporated by reference. The proposed amendments set out above were approved.

**Public Protection and Regulation Cabinet:
Department of Alcoholic Beverage Control: Quotas**

804 KAR 9:010 (Retail liquor license limit.) This administrative regulation was amended to conform to the drafting requirements of KRS Chapter 13A.

**Cabinet for Human Resources: Department for
Health Services: Commission for Health Economics
Control in Kentucky**

902 KAR 20:280 (Standards for prescribed pediatric extended care.) This administrative regulation was amended to provide the citation of statutes relating to licensure, with which the regulation is concerned, instead of a citation of the KRS chapter.

**Department for Employment Services:
Unemployment Insurance**

903 KAR 5:010 (Application for employer account; reports.) This administrative regulation was amended to incorporate by reference a number of agency forms. It was stated that, although the incorporation of some of these forms may not be required, until a more detailed review was possible all would be incorporated.

903 KAR 5:370 (Contract construction rates.) This regulation was amended to conform to the drafting requirements of KRS Chapter 13A.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Personnel Board

101 KAR 1:325 (Probationary periods.)

**Finance and Administration Cabinet: Public
Records**

200 KAR 1:020 (Access to public records.) An objection had been raised to this regulation because some sections repeated or summarized statutory language. Agency personnel stated that the Open Records Act required publication and posting of the regulation, and that to delete this material would require the posting of additional documents and would result in confusion of those the Act and regulation were intended to benefit. The Subcommittee had no objection to this regulation.

**Tourism Cabinet: Department of Fish and
Wildlife Resources: Fish**

301 KAR 1:122 (Importation, possession; live fish.)

**Natural Resources and Environmental Protection
Cabinet: Department for Environmental
Protection: Division of Water: Water Resources**

401 KAR 4:125 (Wild rivers administration.)

Corrections Cabinet: Office of the Secretary

501 KAR 6:020 (Corrections policies and procedures.)

**Transportation Cabinet: Department of Vehicle
Regulation: Division of Motor Carriers**

601 KAR 1:090 (Exempted commodities.)

Office of Aeronautics: Airport Safety Standards

602 KAR 20:030 (Standards applicable to all airports.)

602 KAR 20:040 (Restricted use airports.)

602 KAR 20:110 (Restricted use heliport.)

Department of Highways: Traffic

603 KAR 5:230 (Bridge weight limits on the extended weight coal or coal by-products haul road system.)

**Education and Humanities Cabinet: State Board
for Elementary and Secondary Education:
Department of Education: Office of Instruction:
Teacher Certification**

704 KAR 20:080 (Provisional middle grades certificate.)

**Office of Education for Exceptional Children:
Exceptional and Handicapped Programs**

707 KAR 1:051 (Exceptional children's programs.) This administrative regulation, when filed by the agency, contained amendments that were in a previous amendment that became effective in November of 1988. Subcommittee staff pointed out that these erroneous amendments in the regulation considered today had been correct when originally published in the Administrative Register.

707 KAR 1:140 (Qualifications for approved classroom assignment of teachers of exceptional children.)

**Public Protection and Regulation Cabinet:
Department of Insurance
Insurance Contract**

806 KAR 14:121 (Minimum standards for the readability and intelligibility of insurance contracts.) An objection had been raised that

this regulation did not comply with the mandate of the statute, in that existing policies will not be rewritten, as required by statute to simplify language employed in insurance contracts, when the term is extended at the end of the policy period. Those objecting felt that the statute clearly required that existing insurance policies, upon amendment or renewal, would have to be rewritten to conform to the language simplification requirements. Agency personnel stated that the requirement to rewrite amended or renewed policies, if interpreted in this manner, could result in the impairment of the obligation of contracts and the loss of vested rights; therefore, the agency proposed to limit the language simplification requirement in the case of an extension of the term. The Subcommittee had no objection to this administrative regulation.

Cabinet for Human Resources: Department for Employment Services: Unemployment Insurance

903 KAR 5:030 (Employer contributions.)

903 KAR 5:080 (Reasonable time for protesting claim.)

903 KAR 5:130 (Appeals.)

903 KAR 5:150 (Determination defined.)

903 KAR 5:300 (Required reports and due dates.)

903 KAR 5:310 (Due dates.)

903 KAR 5:320 (Fraud disqualifications.)

903 KAR 5:330 (Release of notice of levy.)

903 KAR 5:340 (Voluntary election of coverage.)

903 KAR 5:350 (Covered employment.)

903 KAR 5:360 (Limitation on pension deductions.)

903 KAR 5:380 (Successorship.)

Department for Medicaid Services: Medicaid Services

907 KAR 1:013 (Payments for hospital inpatient services.)

907 KAR 1:036 (Amounts payable for skilled nursing and intermediate care facility services.)

Department for Mental Health and Mental Retardation Services: Institutional Care

908 KAR 3:080 (Policies and procedures of Hazelwood ICF - MR.)

908 KAR 3:120 (Policies and procedures of Western State Hospital.)

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 11 a.m. until November 1, 1989 at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of September 21, 1989

The Interim Joint Committee on Health and Welfare met on Wednesday, September 20, 1989, but took no action on the following regulations:

902 KAR 4:040	907 KAR 1:012 & E
904 KAR 2:006 & E	907 KAR 1:022 & E
904 KAR 2:035	907 KAR 1:026 & E
904 KAR 2:040	907 KAR 1:027 & E
904 KAR 2:046	907 KAR 1:031 & E
904 KAR 2:060	907 KAR 1:045 & E
904 KAR 3:080	907 KAR 1:055 & E
905 KAR 6:010	907 KAR 1:402
905 KAR 6:040	907 KAR 1:416
905 KAR 6:050	907 KAR 1:450 & E
905 KAR 6:060	907 KAR 1:474
907 KAR 1:004 & E	

INTERIM JOINT COMMITTEE ON
LABOR AND INDUSTRY
Meeting of September 21, 1989

The Interim Joint Committee on Labor and Industry met on September 21, 1989, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A:

803 KAR 2:020
903 KAR 5:270

The Committee deferred the following regulation at the agency's request:

803 KAR 25:090

The Committee adjourned at 11:30 a.m. until October 10, 1989

INTERIM JOINT COMMITTEE ON JUDICIARY
Meeting of September 19, 1989

The Interim Joint Committee on Judiciary met on Tuesday, September 19, 1989, at 1:30 p.m., in Room 327 of the Capitol, and submits this report:

The Interim Joint Committee on Judiciary determined that the following regulations complied with KRS Chapter 13A:

Justice Cabinet, Department of State Police:
502 KAR 45:010 & E
502 KAR 45:125 & E

Corrections Cabinet:
501 KAR 6:020 Corrections Policies and Procedures
501 KAR 6:030 Kentucky State Reformatory
501 KAR 6:050 Luther Luckett Correctional Complex

501 KAR 6:060 Northpoint Training Center
501 KAR 6:130 & E Western Kentucky Farm Center

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of October 9, 1989

The Interim Joint Committee on Transportation met on Tuesday and Wednesday, October 3 & 4, 1989, and submits this report:

The Committee determined that the following administrative regulations complied with KRS Chapter 13A:

600 KAR 3:020 as amended by ARRS
601 KAR 1:045
603 KAR 5:110

INTERIM JOINT COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS
Meeting of October 6, 1989

The Interim Joint Committee on Elections and Constitutional Amendments met on October 6, 1989, and submits this report:

The Committee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

801 KAR 1:005
801 KAR 1:010
801 KAR 1:020
801 KAR 1:040

The Committee adjourned at 11:30 a.m. until January, 1990.

INTERIM JOINT COMMITTEE ON LABOR & INDUSTRY
Meeting of October 10, 1989

The Interim Joint Committee on Labor and Industry met on October 10, 1989, at 10:00 a.m. and submits this report:

The Committee took no action on 803 KAR 25:090.

The Committee adjourned at 12:10 p.m. until October 27, 1989.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of October 11, 1989

The Interim Joint Committee on State Government met October 11, 1989, and submits this report.

The Committee determined that the following administrative regulations comply with KRS Chapter 13A:

200 KAR 1:020 - Access to public records
(Finance and Administration Cabinet)

200 KAR 5:020 - Finance and Administration
Cabinet manual of policies and procedures

The Committee deferred action, without the agency's requesting deferral, on the following administrative regulation, the Chairman noting that the regulation would therefore become effective:

101 KAR 1:325 - Probationary periods
(Personnel Board)

INTERIM JOINT COMMITTEE on
BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of October 13, 1989

The Interim Joint Committee on Business Organizations and Professions met on Friday, October 13, 1989, and submits this report:

The Committee determined that the following administrative regulations complied with KRS Chapter 13A:

804 KAR 9:010 Alcoholic Beverage Control Board
201 KAR 8:015 Board of Dentistry
201 KAR 24:040 Board for Proprietary Education

CUMULATIVE SUPPLEMENT

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NOTE: Emergency regulations expire 90 days from publication or upon replacement or repeal.

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Emergency Regulation	16 Ky.R. Page No.	Effective Date	Regulation	16 Ky.R. Page No.	Effective Date
200 KAR 17:010E	116	6-15-89	1 KAR 4:005		
Replaced	341	8-22-89	Amended	788	
301 KAR 2:044E	531	8-21-89	101 KAR 1:325		
501 KAR 6:020E	532	8-21-89	Amended	372	10-11-89
405 KAR 8:010E	321	8-10-89	101 KAR 2:006	673	
405 KAR 10:200E	732	9-27-89	101 KAR 2:020		
502 KAR 45:010E	119	6-28-89	Amended	568	
Replaced	536	9-19-89	101 KAR 2:030		
502 KAR 45:125E	119	6-28-89	Amended	569	
Replaced	286	9-19-89	101 KAR 2:040		
702 KAR 5:010E	334	7-17-89	Amended	573	
Replaced	538	10-8-89	101 KAR 2:050		
702 KAR 5:030E	334	7-17-89	Amended	575	
Replaced	198	10-8-89	101 KAR 2:060		
702 KAR 5:080E	335	7-17-89	Amended	577	
Replaced	200	10-8-89	101 KAR 2:070		
705 KAR 5:130E	338	8-9-89	Amended	579	
709 KAR 1:060E	340	8-9-89	101 KAR 2:090		
Replaced	224	10-8-89	Amended	581	
902 KAR 20:280E	120	6-22-89	101 KAR 2:100		
903 KAR 5:270E	124	6-22-89	Amended	582	
Replaced	237	9-21-89	101 KAR 2:150		
904 KAR 2:006E	124	7-14-89	Amended	586	
Replaced	238	9-20-89	101 KAR 2:160		
904 KAR 2:016E	736	10-6-89	Amended	587	
904 KAR 2:025E	741	10-9-89	101 KAR 3:006	673	
907 KAR 1:004E	127	7-14-89	101 KAR 3:040		
Replaced	252	9-20-89	Amended	588	
907 KAR 1:012E	135	7-14-89	101 KAR 3:050		
Replaced	260	9-20-89	Amended	590	
907 KAR 1:013E	136	7-14-89	103 KAR 43:310	674	
907 KAR 1:022E	138	7-14-89	200 KAR 1:020		
Replaced	264	9-20-89	Amended	373	10-11-89
907 KAR 1:026E	141	7-14-89	200 KAR 5:020	500	
Replaced	267	9-20-89	As Amended	745	10-11-89
907 KAR 1:027E	142	7-14-89	200 KAR 17:010	89	
Replaced	269	9-20-89	As Amended	341	8-22-89
907 KAR 1:031E	144	7-14-89	201 KAR 2:010		
Replaced	270	9-20-89	Amended	791	
907 KAR 1:036E	146	7-14-89	201 KAR 2:015		
907 KAR 1:045E	153	7-14-89	Amended	791	
Replaced	280	9-20-89	201 KAR 2:020		
907 KAR 1:055E	154	7-14-89	Amended	793	
Replaced	281	9-20-89	201 KAR 2:030		
907 KAR 1:450E	156	7-14-89	Amended	794	
Replaced	551	9-20-89	201 KAR 2:040		
			Amended	795	
			201 KAR 2:080		
			Amended	796	

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201 KAR 2:121	674		401 KAR 39:010		
201 KAR 2:130			Amended	616	
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201 KAR 2:131	92	9-2-89	Amended	617	
201 KAR 2:165			401 KAR 39:030		
Amended	797		Amended	619	
201 KAR 2:175			401 KAR 39:060		
Amended	798		Amended	624	
201 KAR 2:190			401 KAR 39:070		
Amended	799		Amended	625	
201 KAR 8:015			401 KAR 39:080		
Amended	376		Amended	628	
As Amended	745	10-13-89	401 KAR 39:090		
201 KAR 18:150			Amended	629	
Amended	592		401 KAR 39:110		
201 KAR 21:041			Amended	631	
Amended	44		401 KAR 39:120		
As Amended	344	9-2-89	Amended	632	
201 KAR 21:070	93	9-2-89	401 KAR 50:036		
201 KAR 21:075	94		Amended	635	
As Amended	345		405 KAR 8:010		
As Amended	535	10-8-89	Amended	421	
201 KAR 21:080	95	9-2-89	Amended	775	
201 KAR 21:085	96		405 KAR 10:200		
As Amended	346	9-2-89	Amended	641	
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As Amended	347	9-2-89	Amended	47	9-2-89
201 KAR 24:040	501		Amended	183	9-19-89
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301 KAR 1:130			Amended	184	9-19-89
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301 KAR 1:200			Amended	646	
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301 KAR 2:140			Amended	648	
Amended	596		501 KAR 6:050		
301 KAR 2:220			Amended	186	9-19-89
Amended	801		501 KAR 6:060		
301 KAR 3:080			Amended	188	9-19-89
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Amended	609		Amended	856	
401 KAR 6:300			601 KAR 1:025		
Amended	613		Amended	651	
401 KAR 31:010			601 KAR 1:045		
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602 KAR 20:120	514		709 KAR 1:051	291	10-8-89
603 KAR 5:050			709 KAR 1:060		
Amended	862		Amended	224	10-8-89
603 KAR 5:070			709 KAR 1:080		
Amended	863		Amended	225	10-8-89
603 KAR 5:110			709 KAR 1:090	292	10-8-89
Amended	192	10-4-89	709 KAR 1:100	294	
603 KAR 5:230			As Amended	539	10-8-89
Amended	448		709 KAR 1:110	297	
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Amended	652		709 KAR 1:120	298	10-8-89
702 KAR 1:115			709 KAR 1:130	299	10-8-89
Amended	195		709 KAR 1:140	300	10-8-89
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702 KAR 4:050			Amended	485	
Amended	52	9-2-89	801 KAR 1:010		
Amended	655		Amended	486	
702 KAR 4:110	98		801 KAR 1:020		
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702 KAR 4:120	99		801 KAR 1:030		
As Amended	348	9-2-89	Repealed	486	10-6-89
702 KAR 4:130	99		801 KAR 1:040		
As Amended	349	9-2-89	Amended	488	
702 KAR 5:010			801 KAR 1:050		
Amended	197		Repealed	486	10-6-89
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702 KAR 5:030			Repealed	486	10-6-89
Amended	198	10-8-89	801 KAR 1:100		
702 KAR 5:080			Repealed	486	10-6-89
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702 KAR 7:030			Amended	227	9-21-89
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803 KAR 2:418	716		901 KAR 5:080		
803 KAR 2:419	1104		Amended	932	
803 KAR 2:420	717		901 KAR 5:090		
803 KAR 2:421	719		Amended	933	
803 KAR 2:422	1105		901 KAR 5:100		
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803 KAR 25:090			Amended	663	
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804 KAR 9:010			Amended	667	
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806 KAR 14:121	516		As Amended	544	9-20-89
808 KAR 10:040			902 KAR 4:060		
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Amended	881		Amended	966	
815 KAR 7:060			902 KAR 20:046		
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903 KAR 5:360	523		Amended	281	9-20-89
903 KAR 5:370	523		907 KAR 1:402		
903 KAR 5:380	524		Amended	283	9-20-89
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